



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5

77 WEST JACKSON BOULEVARD  
CHICAGO, IL 60604-3590

US EPA RECORDS CENTER REGION 5



464190

FEB 22 2002

CERTIFIED MAIL

REPLY TO THE ATTENTION OF

RETURN RECEIPT REQUESTED

Tommy Armour Golf  
f/k/a Victor Comptometer-Golf  
8350 North Lehigh Avenue  
Morton Grove, IL 60053

Re: Follow up to Request for Information Pursuant to Section 104  
of CERCLA for Chemical Recovery Systems, Inc., 142 Locust  
Street, Elyria, Ohio 44035

Dear Sir or Madam:

On June 26, 2001 the United States Environmental Protection Agency (U.S. EPA) issued a letter notifying you that you were determined to be a Potentially Responsible Party (PRP) at the abovementioned site. Included with this letter was an information request, dated March 02, 2001, pursuant to the Federal Superfund law Section 104(e) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) as amended, 42 U.S.C. § 9604(e). A copy of the June 26, 2001 letter and the attached information request are enclosed with this letter. The information request was delivered to you by certified mail. The information request required certain documents and information be provided within thirty [30] days of your receipt of the letter.

Although the deadline has passed, U.S. EPA still has not received any response to its information request. To assist U.S. EPA in gathering information about contamination at the Site, please provide a complete response to the information request immediately.

If you have not responded to the information request because you are concerned that your responses may contain information that you consider "confidential," please be advised that you cannot withhold information or records upon that basis. Please refer to Enclosure 5 of the original letter to assert a business confidentiality claim.

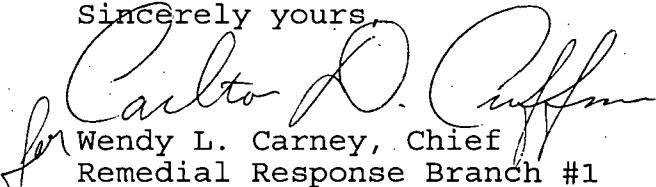
Continued failure to comply with U.S. EPA's information request, or to adequately justify such failure to respond, may subject you to enforcement action seeking to compel compliance and collect penalties of up to twenty-seven thousand dollars (\$27,500) per day of noncompliance pursuant to Section 104(e)(5) of CERCLA, 42 U.S.C. §9604(e)(5). U.S. EPA has the authority to use the information requested herein in an administrative, civil, or criminal action.

Your response to the information request should be mailed to:

Deena Sheppard-Johnson  
Enforcement Specialist  
U.S. Environmental Protection Agency  
Remedial Enforcement Support Section  
77 West Jackson Boulevard SR-6J  
Chicago, IL 60604-3590

Please contact Deena Sheppard-Johnson, Enforcement Specialist, at (312) 886-7048 if you have any questions regarding this matter.

Sincerely yours,

  
Wendy L. Carney, Chief  
Remedial Response Branch #1

Enclosures: Special Notice Letter of June 26, 2001  
General Notice/Information Request Letter of  
March 02, 2001



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5  
77 WEST JACKSON BOULEVARD  
CHICAGO, IL 60604-3590

JUN 26 2001

REPLY TO THE ATTENTION OF:

**URGENT LEGAL MATTER -- PROMPT REPLY NECESSARY**  
**CERTIFIED MAIL; RETURN RECEIPT REQUESTED**

Tommy Armour Golf  
f/k/a Victor Comptometer-Golf  
8350 North Lehigh Avenue  
Morton Grove, IL 60053

Re: Chemical Recovery Systems, Inc., 142 Locust Street, Elyria,  
Ohio 44035

Dear Sir or Madam:

This letter (in most cases<sup>1</sup>) follows a general notice letter that was issued on March 1, 2001, in connection with the above-referenced site. As the listed contact person for the potentially responsible party (PRP) identified above, this letter has been sent to your attention. This letter serves three basic functions. First, it contains a formal demand for reimbursement of costs that have been incurred, including interest thereon, and that are expected to be incurred, which are subject to interest, in response to the health and environmental concerns at the site. Second, this letter notifies you that a 60 day period of formal negotiations with the U.S. Environmental Protection Agency (U.S. EPA) automatically begins with this letter. Third, this letter provides general and site-specific information to assist you in these negotiations.

**NOTICE OF POTENTIAL LIABILITY**

As indicated in the general notice letter previously sent regarding this site, U.S. EPA has information indicating that you may be a PRP as defined at Section 107(a) of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. 9607(a), as amended (CERCLA), with respect to this site.

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<sup>1</sup> In a few cases, U.S. EPA has only now determined that a party is a PRP at this Site. In these cases, U.S. EPA is sending both General and Special Notices together with copies of documentation linking the PRP to this Site.

## **SPECIAL NOTICE AND NEGOTIATION MORATORIUM**

U.S. EPA has determined that use of the Section 122(e) special notice procedures specified in CERCLA will facilitate a settlement between U.S. EPA and PRPs for this site. Therefore, under CERCLA Section 122, this letter triggers a 60-day moratorium on certain U.S. EPA response activities at the site. During this 60-day period, the PRPs, including you, are invited to participate in formal negotiations with U.S. EPA. You are also encouraged to voluntarily negotiate a settlement providing for the PRPs, including yourself, to conduct or finance the response activities required at the site. The 60-day negotiation period ends on **August 25, 2001**. The 60-day negotiation moratorium will be extended for an additional 30 days if PRPs provide U.S. EPA with a good faith offer to conduct or finance the remedial investigation/feasibility study (RI/FS). Should a 90-day negotiation moratorium take place, negotiations will conclude on **September 24, 2001**. If settlement is reached between U.S. EPA and the PRPs within the 90-day negotiation moratorium, the settlement will be embodied in a consent order for RI/FS.

### **FUTURE RESPONSE ACTIONS**

U.S. EPA plans to conduct the following CERCLA activities at the site: Remedial Investigation/Feasibility Study (RI/FS) on or about September 24, 2001.

### **WORK PLAN AND DRAFT CONSENT ORDER/DECREE**

A copy of U.S. EPA's statement of work and draft administrative order are attached. This is provided to assist you and other PRPs in developing a good faith offer for conducting the RI/FS.

### **GOOD FAITH OFFER**

As indicated, the 60-day negotiation moratorium triggered by this letter is extended for 30 days if the PRPs submit a good faith offer to U.S. EPA. A good faith offer to conduct or finance the RI/FS is a written proposal that demonstrates the PRPs' qualifications and willingness to conduct or finance the RI/FS and includes the following elements:

1. A statement of willingness by the PRPs to conduct or finance the RI/FS which is consistent with U.S. EPA's statement of work and draft administrative order and provides a sufficient basis for further negotiations.



2. A paragraph-by-paragraph response to U.S. EPA's statement of work and draft administrative order including a response to any other attached documents.
3. A detailed description of the work plan identifying how the PRPs plan to proceed with the work.
4. A demonstration of the PRPs' technical capability to carry out the RI/FS including the identification of the firm(s) that may actually conduct the work or a description of the process they will use to select the firm(s).
5. A demonstration of the PRPs' capability to finance the RI/FS.
6. A statement of willingness by the PRPs to reimburse U.S. EPA for costs incurred in overseeing the PRPs' conduct of the RI/FS.
7. The name, address, and phone number of the party or steering committee who will represent the PRPs in negotiations.

#### **INFORMATION RELEASE**

The parties are hereby notified that additional information has been obtained since the previous notice. U.S. EPA is providing the following information as an attachment to this letter:

1. An updated list of names and addresses of PRPs to whom this notification is being sent. Inclusion on, or exclusion from, the list does not constitute a final determination by U.S. EPA concerning the liability of any party for the release or threat of release of hazardous substances at the site.
2. A fact sheet that describes the site.

#### **DEMAND FOR PAYMENT**

With this letter, U.S. EPA demands that you reimburse U.S. EPA for its costs incurred to date, and encourages you to voluntarily negotiate a consent order under which you and other PRPs agree to perform the RI/FS.

In accordance with CERCLA, U.S. EPA already has undertaken certain actions and incurred certain costs in response to

conditions at the site. These response actions include several investigations including a Field Investigation for the hydrogeologic and extent of contamination study completed on April 26, 1982, a Preliminary Site Assessment/Site Investigation, and a Site Team Prioritization Report. The cost to date of the response actions performed at the site through U.S. EPA funding is approximately \$408,013.80. In accordance with Section 107(a) of CERCLA, demand is hereby made for payment of the above amount plus any and all interest recoverable under Section 107 or under any other provisions of law.

As indicated above U.S. EPA anticipates expending additional funds for the RI/FS. Whether U.S. EPA funds the entire RI/FS, or simply incurs costs by overseeing the parties conducting these response activities, you are potentially liable for these expenditures plus interest.

#### **ABILITY TO PAY-FUTURE FINANCIAL REVIEW**

If your company wishes to settle, but would face a severe financial hardship by remitting the full payment amount, you may request that the U.S. EPA review your financial ability to pay. Under U.S. EPA policy, it is possible in appropriate circumstances for the payment to be made in installments. This may be considered as part of U.S. EPA's financial review. To process a claim of financial hardship, the U.S. EPA will require you to substantiate that claim by submitting detailed financial documentation. A complete description of the U.S. EPA's financial review process is available upon request.

#### **PRP STEERING COMMITTEE**

U.S. EPA recommends that all PRPs meet to select a steering committee responsible for representing the group's interests. Establishing a manageable group is critical for successful negotiations with U.S. EPA. U.S. EPA has scheduled an initial PRP meeting on June 27, 2001, at the John Marshall Law School, 315 South Plymouth Court, Chicago, Illinois 60604, from 9:00 A.M. through 4:00 P.M. U.S. EPA encourages each PRP to select one person from its company or organization who will represent its interests.

#### **ADMINISTRATIVE RECORD**

Pursuant to CERCLA Section 113(k), U.S. EPA must establish an administrative record that contains documents that form the basis of U.S. EPA's decision on the selection of a response action for a site. The administrative record files, which contain the

documents related to the response action selected for this site, will be available to the public for inspection and comment. These files are located in the Superfund Records Center located at the U.S. EPA regional office, 77 W. Jackson Blvd., Chicago, Illinois. Copies of documents in the administrative record file are also available for public inspection pursuant to 40 CFR 300.805 at the local Site Repository located at:

Elyria Public Library  
320 Washington Avenue  
Elyria, Ohio 44035  
(440) 323-5747

#### PRP RESPONSE AND U.S. EPA CONTACT PERSON

You are encouraged to contact U.S. EPA by July 11, 2001, to indicate your willingness to participate in future negotiations at this site. Otherwise, you have 60 calendar days from this notice to provide U.S. EPA with a good faith offer, in writing, demonstrating your willingness to perform the RI/FS. You may respond individually or through a steering committee if such a committee has been formed. If U.S. EPA does not receive a timely response, U.S. EPA will assume that you do not wish to negotiate a resolution of your liabilities in connection with the response, and that you have declined any involvement in performing the response activities. You may be held liable by U.S. EPA under Section 107 of CERCLA for the cost of the response activities U.S. EPA performs at the site and for any damages to natural resources.

Your response to this notice letter should be sent to:

Deena Sheppard-Johnson  
Enforcement Specialist  
U.S. Environmental Protection Agency  
Remedial Enforcement Support Section  
77 West Jackson Boulevard (SR-6J)  
Chicago, Illinois 60604-3590

The factual and legal discussions contained in this letter are intended solely for notification and information purposes. They are not intended to be and cannot be relied upon as final U.S. EPA positions on any matter set forth herein. If you have questions of a technical nature, contact Gwendolyn Massenburg, Remedial Project Manager, at (312) 886-0983. For legal questions contact Thomas Nash, Associate Regional Council,

at (312) 886-0552. Address all other questions to Deena Sheppard-Johnson, Enforcement Specialist, at (312) 886-7048.

Sincerely,

*Lawrence J. Schnitt*

*for* Wendy Carney, Chief  
Remedial Response Branch #1

Attachments:

1. Draft Consent Order
2. Statement of Work
3. Site Fact Sheet
4. SBREFA Fact Sheet
5. Updated PRP List

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5

IN THE MATTER OF:

CHEMICAL RECOVERY SYSTEMS, INC.  
142 Locust Street, Elyria, Ohio 44305  
CERCLIS ID# OHD 057 001 810

RESPONDENTS  
See Attachments

Proceeding Under Sections 104, 122(a), and 122(d)(3) of the Comprehensive Environmental Response, Compensation, and Liability Act as amended (42 U.S.C §§ 9604, 9622(a), 9622(d)(3)). U.S. EPA Docket No.

ADMINISTRATIVE ORDER ON CONSENT  
FOR REMEDIAL INVESTIGATION/FEASIBILITY STUDY

I. INTRODUCTION

1. This Administrative Order on Consent (Consent Order) is entered into voluntarily by the United States Environmental Protection Agency (EPA) and the Respondents listed in Attachment A. Attachment A is hereby wholly incorporated by reference into this Consent Order. The Consent Order concerns the preparation of, performance of, and reimbursement for all costs incurred by EPA in connection with a remedial investigation and feasibility study (RI/FS) at the Chemical Recovery Systems, Inc., located at 142 Locust Street, Lorain County, Elyria, Ohio (Site) as well as other past response costs.

## II. JURISDICTION

2. This Consent Order is issued under the authority vested in the President of the United States by Sections 104, 122(a) and 122(d)(3) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, 42 U.S.C. Sections 9604, 9622(a), 9622(d)(3) (CERCLA). This authority was delegated to the Administrator of EPA on January 23, 1987, by Executive Order 12580, 52 Fed. Reg. 2926 (1987), and further delegated to Regional Administrators on September 13, 1987, by EPA Delegation No. 14-14-C. This authority has been re-delegated by Region 5's Administrator to the Director, Superfund Division, Region 5 on May 2, 1996.

3. The Respondents agree to undertake all actions required by the terms and conditions of this Consent Order. In any action by EPA or the United States to enforce the terms of this Consent Order, Respondents consent to and agree not to contest the authority or jurisdiction of the Director, Superfund Division, Region 5 to issue or enforce this Consent Order, and agree not to contest the validity of this Order or its terms.

## III. PARTIES BOUND

4. This Consent Order will apply to and be binding upon EPA and will be binding upon the Respondents, their agents, successors, assigns, officers, directors and principals.

Respondents are listed in Attachment A, which is wholly incorporated by reference into this Consent Order. Respondents are jointly and severally responsible for carrying out all actions required of them by this Consent Order. The signatories to this Consent Order certify that they are authorized to execute and legally bind the parties they represent to this Consent Order. No change in the ownership or corporate status of the Respondents or of the facility or site will alter Respondents' responsibilities under this Consent Order.

5. The Respondents will provide a copy of this Consent Order to any subsequent owners or successors before ownership rights or stock or assets in a corporate acquisition are transferred. Respondents will provide a copy of this Consent Order to all contractors, subcontractors, laboratories, and consultants which are retained to conduct any work performed under this Consent Order, within fourteen (14) days after the effective date of this Consent Order or the date of retaining their services, whichever is later. Respondents will condition any such contracts upon satisfactory compliance with this Consent Order. Notwithstanding the terms of any contract, Respondents are responsible for compliance with this Consent Order and for ensuring that their subsidiaries, employees, contractors, consultants, subcontractors, agents and attorneys comply with this Consent Order.

#### IV. STATEMENT OF PURPOSE

6. In entering into this Consent Order, the objectives of EPA and the Respondents are: (a) to determine the nature and extent of contamination and any threat to the public health, welfare, or the environment caused by the release or threatened release of hazardous substances, pollutants or contaminants at or from the site or facility, by conducting a remedial investigation; (b) to determine and evaluate alternatives for remedial action (if any) to prevent, mitigate or otherwise respond to or remedy any release or threatened release of hazardous substances, pollutants, or contaminants at or from the site or facility, by conducting a feasibility study; and (c) to recover response and oversight costs incurred by EPA with respect to this Consent Order.

7. The activities conducted under this Consent Order are subject to approval by EPA and will provide all appropriate necessary information for the RI/FS, and for a record of decision that is consistent with CERCLA and the National Contingency Plan (NCP), 40 C.F.R. Part 300. The activities conducted under this Consent Order will be conducted in compliance with all applicable EPA guidance, policies, and procedures.



## V. FINDINGS OF FACT

8. The Site is approximately four (4) acres (with several lots within the 4 acres), and is located at 142 Locust Street (formerly Maple Street) in a predominantly commercial/industrial area near the central business district of the city of Elyria, in Lorain County, Ohio. The Site occupies a part of a peninsula jutting into the Black River. The western boundary of the Site runs along the bank of the East Branch of the Black River (River), the northern boundary adjoins property owned by the Englehard Chemical Company (formerly Harshaw Chemicals), the eastern boundary runs along Locust Street and Englehard Chemical Company, and the Site's southern boundary adjoins the property of M&M Aluminum Siding. Presently, Mrs. Dorothy Obitts owns the site. She leases it to the M&M Aluminum Siding Company. Two buildings remain on Site; located in the southeast corner of the site is a combination warehouse/office building, and a Rodney Hunt Still building. The foundation from the former Brighton Still building is located in the northwest corner. Two sumps located inside of the still buildings allegedly were used to dispose of waste. One of the sumps located in the shell of the Rodney Hunt building is easily identified. Information regarding the construction of these sumps or where the collected waste from the sumps were disposed of is unknown. The Site is fenced in on all sides except for

all sides except for the side bordering the River, which is overgrown by heavy vegetation.

9. The demographics of the Site have been identified by U. S. EPA, (Oct. 25, 1999). The site is located in an Environmental Justice (EJ) Community, (Census Tract 0708, Block Group 1, Population 73, Low income 91.8%, Minority 0.00%). Region 5's EJ community is identified as a block group, usually within a one (1) mile radius of the Site with a low-income or minority population percentage of the block group having either a low-income or minority percentage greater than or equal to two (2) times the State's average. Region 5's EJ Criteria for the State of Ohio (State): Minority 13% or greater, Low-income 60% or greater.

10. In 1960, Russell Obitts began the operations by leasing the lots which comprise the site from the Swiers Coal Company. A few years later Russell Obitts's wife, Dorothy, purchased the parcels from the Coal Company.

11. From 1960 through 1974, Russel Obitts formed two companies, Obitts Chemical Services and Obitts Chemical Company. The former operated as a solvent reclamation facility, the latter sold solvents to industry. Obitts obtained used, "scrap" or "spent" organic solvents from various companies. After distilling away the impurities in the "dirty" solvents, the

"cleaned" reclaimed solvents were repackaged and sold. The solvents were transported to and from the site in 55-gallon drums or by tanker trucks. The collected spent solvents were transferred to above ground storage tanks (ASTs) on the Site. Nine ASTs with a capacity of 53,000 gallons were known to have been situated on the site. (CHED 1979a). The types of solvents known to be reclaimed at the facility during its operation included but were not limited to: acetone, hexane, isopropyl alcohol, tetrachloroethene (PCE), toluene, methylene chloride, methyl ethyl ketone, xylene, and paint solvents. The Obitts operations at the site were plagued by a history of fires, explosions, spills, and overturned tankers. Many of these incidents have been documented by photographs.

12. In 1974, Chemical Recovery Systems (CRS) assumed operation of the Site through a stock purchase agreement with the Obitts Chemical Company. In a separate agreement, CRS leased the lots on the peninsula west of Locust Street from Dorothy Obitts, with an option to purchase. Later, CRS exercised its purchase option. Still later, CRS defaulted on payment for the property, and Dorothy Obitts re-assumed uncontested ownership following a legal action. On August 12, 1991, after a long illness Russell Obitts died.

11. From 1974 to 1981 CRS continued in the business of solvent reclamation. The solvents continued to be stored in 55-

gallon drums, ASTs and tanker trucks waiting to be cleaned on site. The number of 55-gallon drums used for "dirty" solvent storage numbered between 4,000-9,000. Operational problems included improper construction of the ASTs and deteriorating and leaking conditions of many of the drums. Frequent spills and releases were documented. One fatality was recorded when a young worker was overcome by solvent fumes while inside a tanker.

12. In August 1978 and April 1980, Ohio Environmental Protection Agency (Ohio EPA), Northeastern District Office documented releases of chemicals from the CRS site to the East Branch of the Black River. Concerns about these releases into the Black River, and the potentially dangerous conditions on-site frequently documented by the local fire Marshall, led U.S. EPA to bring suit against CRS in 1980, requiring the facility owners to abate problems identified at the site.

13. On October 7, 1980, U.S. EPA filed a complaint alleging violations of Sections 7003 of the RCRA and 301 (a) of the CWA. The two principal concerns of the complaint were the threat of fire and explosion posed by the presence of approximately 4000 drums of chemical waste on the site and the presence of defective distillation units. The second complaint reported a leachate stream containing PCBs which was noted running down the bank entering into the East Branch of the Black

River. A boom in the river isolated some of the contaminants including PCBs and organic chemicals.

17. Some time prior to August 1981, before the Hydrogeological and Extent of Contamination Study was performed by U.S. EPA's Field Investigation Team, Ecology & Environment (E&E), Inc., CRS had removed all tanks, drums, and other spent solvent containers from the site; ceased the receipt, processing and storage of the spent solvents on site and removed both distillation units from the site as reported by the E&E contractors.

18. In April 1982, U.S. EPA's Field Investigation Team, E&E, reported the results of the Hydrogeologic and Extent of Contamination Study performed at CRS during August and September of 1981. E&E collected samples from the Site's soil, ground water, surface water and sediments.

19. Results of the April 1982, Hydrogeologic Study for CRS site reported:

a. ~920,000 gallons of leachate (of unknown quality) was produced each year by precipitation infiltrating the soils.

b. The flow rate of ground water entering the River was ~ 59,000 gallons per year.

c. The velocity of ground water flow is ~ 33ft/yr.

d. The ground water flow is to the west toward the river with an average gradient of 0.05.

e. The interception of ground water by the sewer line under drain causes an increase in the flow rate to the River, and concentrates at the outflow which discharges into the River.

20. The results of the April 1982 Geologic Investigation reported:

a. The CRS site is situated on a thin cover of unconsolidated heterogenous, man-made fill, predominantly composed of clay, sand, and gravel (including bricks, cinders, slag, etc).

b. The thickness of the unconsolidated materials ranged from four feet near Locust Street to twenty-eight feet at the western portion of the site near the river.

c. The unconsolidated materials are underlain by the Mississippian age Berea Sandstone.

d. The bedrock is located ~ four feet below ground surface (bgs) on the eastern side of the site.

e. The bedrock on the western side of the site near the river ranges between twenty to twenty-eight feet bgs (Herron, 1979).

f. The Berea Sandstone below the fill is a source of potable water, oil, and natural gas (Northern Ohio Geologic Survey).

g. The ground water beneath the CRS site is present

at ~ ten feet bgs.

21. In August and September of 1981, E&E installed four monitoring wells(MW). MW-1 was installed down gradient to ground water flow, near the former Brighton Still building, northwest corner of the site. MW-2 was installed down gradient to ground water flow, near a former drum storage area, in the southwest corner of the site. MW-3 and MW-4 were installed up gradient to ground water flow (background wells). The down gradient MW-1 & 2 were installed to determine ground water quality. The results of the ground water sampling indicate that past activities at the CRS site have deteriorated the ground water quality. The following organic compounds detected above the maximum contaminant levels (MCLs) (all concentrations are reported in parts per billion (ppb)) in drinking water at the Site were: methylene chloride=71,000, 1,1,1 tri-chloroethane=12,000 (causes nervous system and circulatory dysfunction, the MCL is 200ppb), trichloroethylene=6,300 (central nervous system depressant, the MCL is 5ppb) 1,2 trichloroethylene=6,100, benzene=1100 (acute benzene poisoning affects the central nervous system, and death results from respiratory failure, the MCL is 5ppb), toluene=100,000(a neurotoxin, also adversely affects the liver and kidneys, the MCL is 1000ppb), ethylbenzene=14,000 (adversely affects the liver or kidney, the MCL is 700ppb) phenol=590, PCB 1248=29.

PCB-1254=18 (adversely affects the thymus gland, immune system, reproductive systems, and is a possible carcinogen), and naphthalene=130. The same compounds were detected in MW-2, however, at lower concentrations with the exception of vinyl chloride=1000 (possible carcinogen). The up gradient background MW-3&4 data analysis reported non-detects from all the compound analyzed. The range of inorganic compounds detected above MCLs in MW 1&2 were: lead=840-2500 (causes dysfunction of the kidney, nervous system and the hemopoietic system) (background sample for lead=580-600), barium=164-2740 (increases blood pressure, the MCL is 2000ppb) cadmium=195-825 (adversely affects lungs and kidneys, the MCL is 5ppb) beryllium=8-14, (causes intestinal lesions, the MCL is 5 ppb) copper=670-1700, and arsenic=140-700 (a bioaccumulator along the food chain, causes central nervous system toxicity, and cancer of skin and respiratory tract, the arsenic MCL is currently under review to decrease the limit, presently the MCL is 50ppb).

22. Four surface water samples were collected from the River. Only one sample was collected below the sewer outfall, adjacent to the Site; analysis of this sample detected 14 organic compounds which were not found in other surface water samples; these compounds included: chloroform (heptaotoxin) , carbon tetrachloride (causes liver failure, possible carcinogen), dichlorobromomethane, chloroethane, vinyl chloride,



trichloroethylene, benzene, toluene, 1,3 dichlorobenzene, 1,4 dichlorobenzene, and naphthalene.

23. In August 1981 seventeen soil samples from five(5) soil borings on Site were analyzed to determine the extent of the organic and inorganic contamination.

24. One sample showed a general decrease in organic concentrations with depth, most likely due to surficial dumping or spillage.

25. Another sample collected within three (3) feet of the water table analyzed results showed an increased amount of contamination, when compared with the upper samples of the same boring, but at a deeper depth.

26. Most of the soil samples analyzed reported the concentrations of organic contaminants increased with the sample depth; for instance, a sample collected from 15 to 16.5 feet (below the water table) revealed toluene and ethyl benzene at 530ppm and 240ppm, respectively.

27. The background quality of soil sample analyzed reported trace amounts of chloroform.

28. The inorganic sampling analysis of the soil borings reported elevated concentrations of cadmium, nickle, lead, zinc, and mercury=23 ppm(sampling depth between 5 to 11 feet).

29. Sediment samples were collected simultaneously with the surface water samples from the River.

30. The review of the organic analysis revealed that two groups of chemicals existed:

a. A group of chemicals found ubiquitously distributed included: chrysene, benzo (k) fluoro-anthene, anthracene, flourene, and dibenzo (a,h) anthracene.

b. The second group included organic compounds such as: trichlorofluoromethane, chloromethane, 1,1 dichloromethane, 1,1,1 trichloroethane, vinyl chloride, benzene, toluene, ethyl benzene, phenol, dichlorobenzene, PCBs, several phthalates and naphthalene (found concentrated in the sediments by the sewer outfall).

31. The inorganic analyses of the sediment sampling reported elevated concentrations of aluminum, manganese, arsenic; and at the sewer outfall location cadmium, lead, zinc, copper, and nickel.

32. The conclusions of the field investigation performed by E&E were:

a. Soil samples at the Site reported contamination at various depths with organic chemicals, most likely due to the potential sources: sumps, surficial dumping and groundwater contact.

b. Of the twenty-three organic compounds identified in the soils, fifteen were found in the ground water monitoring wells.

33. On July 12, 1983, a Consent Decree was issued for CRS to address the imminent danger by performing the following actions:

a. Excavate all visibly contaminated soil identified during a joint inspection conducted by representatives of EPA and CRS.

b. Excavate the perimeter of the Brighton Still building in the northwest corner of the Site to a depth of 1 foot and a distance of 2 feet beyond the perimeter of the foundation.

c. Dispose of all removed soil at an EPA approved disposal site.

d. Backfill the excavated areas with clean, clay containing fill.

e. Gently grade the site towards the River.

33. Prior to the Field Investigation performed by EPA contractors E&E during August and September of 1981, CRS had removed all tanks, drums and other spent solvent containers from the Site; ceased the receipt, processing, and storage of "dirty", spent solvents on site; removed all distillation units; and demolished all the buildings on the site except for the warehouse/office building, and a "shell" of the Rodney Hunt Still building.

34. At the time of the 1983 Consent Decree, CRS had

also secured the Site with a fence, filled in the sumps with concrete located under both still buildings and leveled the dikes on Site. CRS removed contaminated soil and disposed of the soil in an approved waste disposal site by September 15, 1983. After conducting a site inspection on November 7, 1983, EPA concluded that CRS was in compliance with the clean-up stipulated in the Consent Decree.

35. Ohio EPA personnel conducted a Site Team Prioritization (STEP) Investigation on behalf of EPA and, following the EPA site investigation protocol, collected samples from the Site during August 1996.

36. During the STEP investigation, Ohio collected samples from the groundwater, soil, and from the river's surface water and sediments.

37. Previous investigations and reports indicated that four ground water monitoring wells existed for sampling on the Site. However, during the STEP investigation only two wells could be located; the wells were considered to be hydraulically down gradient, and the background wells could not be identified. The static water levels ranged between 17.7 feet and 23.5 feet. The following compounds highest "hits" (all concentrations reported in ppb; "J" values are defined as an estimated values that are less than the sample quantitation limit, but greater than zero) were detected during the August 1996 sampling event:

1,1 dichloro-ethane=450J, 1,2 dichloroethene (total)=1400J, toluene=11000, ethylbenzene=4900, styrene=800J, toluene=86,000, phenol=32J, 2 methylphenol=270, di-n-butylphthalate=30J, 4 methylphenol=150, 2,4 dimethylphenol=650, naphthalene=220, 2 methylnaphthalene=12J, Aroclor(PCB)1248=2.3, and Aroclor 1254=5.3 ppb.

38. Several metals and cyanide were detected in all ground water samples; the highest values, reported in ppb, are: arsenic=466, cyanide=49.7 and aluminum=2250, zinc=5270, cyanide=105, lead=27.1, chromium=137, cadmium=21.4 and barium=244 ppb.

39. Several organic compounds and metals were detected in all the soil samples analyzed from the Site. Due to the inability to find a suitable location to collect background soil samples, none were taken during the soil sampling event.

40. The most notable organic compounds detected from the soil sampling event (reported in ppb) were: 1,2 dichloro-ethene=1400, tetrachloroethene=500, 1,1,1 trichloroethane=14J, trichloroethene=19000, tetrachloroethene=5500, phenanthrene=3400, fluoranthene=6800, pyrene=6900, butylbenzylphthalate=8000, chrysene=3800 and benzo(a)pyrene=5900ppb.

41. The metals and cyanide (reported in ppm) detected in site soils at elevated concentrations were: Aluminum= 5210-11,400, lead=56.3-1180, zinc=103-1460, and 0.6-31.6.

42. A total of four surface water samples were collected from the River, including the background sample. The most significant detections (reported in ppb) included vinyl chloride=65, 1,1 dichloroethane=110, benzene=19, ethylbenzene=71, and total xylenes=19ppb.

43. Three sediment samples plus a duplicate sample were collected from the River. The sampling locations were chosen based on the evaluation of historical data, potential source areas, and site reconnaissance.

44. The following organic contaminants were detected in the sediment samples (reported in ppb): benzene=34; 2-butanone=4J; ethylbenzene 2J; total xylene=13J; acenaphthylene=62J; 4-nitrophenol=100J; carbazole=200; fluoranthene=2300; butylbenzylphthalate=86J; nitroaniline=240J; and acenaphthene was detected in all samples except the background sample=140J, 78J, and 67J.

45. The following pesticides/PCB were detected in the sediment sample (reported in ppb): endosulfan sulfate=2.7J; aldrin 0.18J; endrin aldehyde=1.6J; gamma-chlordane=3; PCB aroclor-1254=100; and aroclor-1260=16J.

46. The following highest "hits" of inorganics were detected in the sediment samples collected (reported in ppb): aluminum=14,100; chromium=34.8; cobalt=18; lead=53.1; copper=99.5; barium=146; magnesium=5280; manganese=487; mercury=0.43; nickel=51.4; thallium=0.85; vanadium=29.1; and zinc=198.

47. Elevated site-related contaminants were detected in all of the environmental media. The five pathways evaluated during the STEP investigation were ground water, surface water, sediments, soil, and air.

48. In terms of the ground water pathway, based on the data collected and the analytical results, a high potential exists for ground water contamination to leach into the surface water. The potential for private drinking water supplies to be impacted by the site is low because, down gradient of the site, drinking water comes from the local municipality. The impact to the surface water from the Site needs further investigation through the collection of additional sampling and investigatory work.

49. The soil pathway main source of contamination was from the seepage due to improper storage and handling of drums, spills, and leakage which occurred through improper hose connections to tanks and stills. High concentrations of organic compounds, inorganics and relatively low pesticides/PCBs were detected in the soils on Site and are highly likely to infiltrate into the ground water. Presently no residences, schools, day care facilities or sensitive populations are located close to the Site, as it is located in an industrial/commercial area. Only one up gradient resident is located within one mile of the Site. The primary threat of exposure to the soil is from direct

contact to workers or by trespassers who approach the Site from the portion near the River that is not fenced. Additionally the number of employees at M&M Aluminum Siding is unknown.

50. The surface water pathway targets include intakes that supply drinking water, fisheries, and sensitive environments. From the Site, surface water runoff flows into the East Branch of the Black River and eventually joins with the main branch of the Black River. The Black River flows north by northeast, emptying into Lake Erie. The area of concern (the CRS Site) runs from the probable point of entry (PPE) downstream fifteen miles to the target distance limit (TDL). Drinking targets include surface water intakes. From the PPE to the TDL there are not any intakes and therefore no targets exist via this route. Elywood Park, Cascade Park, and Washington Park are all located along the Black River and are presently picnic areas only. French Creek Park and Black River Park are also located along the Black River and offer picnic areas, as well as permitted fishing. There are approximately 4 miles of wetlands located in the 15 mile TDL. Federally endangered species--the bald eagle and the Indiana bat--are known inhabitants in Lorain County and possibly in areas along the Black River, within the 15 mile TDL.

51. The sediment pathway sample analysis demonstrated organic and inorganic contamination. The main source of



contamination is from the surface water, and Site run-off. The impact to the surface water and sediment from the Site needs further investigation through the collection of additional sampling and investigatory work.

52. During all of the Site investigation, release of contaminant constituents to the air were not previously documented. The most apparent target of this pathway would be through inhalation and dermal contact by workers in the areas of the former above ground storage tanks and former drum storage areas.

53. Currently, the Site is not listed on the National Priorities List (NPL). The Site is, however, considered as NPL-equivalent, and may be proposed for inclusion on the NPL pertaining to Section 105 of CERCLA, 42 U.S.C. § 9605.

54. Chemical Recovery Systems, Inc., of Ohio, was an owner and operator of the Site.

55. Respondents listed in Attachment A of this Consent Order are persons who arranged for transport, disposal, or treatment, of the hazardous substance found at the Site.

56. EPA has completed a Hydrogeologic and Extent of Contamination Field Investigation Study.

57. Ohio EPA conducted a Site Team Evaluation Prioritization Investigation at the Site, which included a pre-scoring for the NPL.

58. On July 2, 1999, the Agency for Toxic Substances and Disease Registry (ATSDR) with the support of the City of Elyria Health Department completed a Health Consultation which provided information about the potential health effects associated with the Site.

59. Other investigations included the identification of potential sources of ground water contamination and the development of aerial photographs to map the Site's condition over a period of years.

60. EPA issued General Notices of Potential Liability and information request under Section 104(e) of CERCLA, 42 U.S.C. § 9604(e), to Respondents.

#### **VI. CONCLUSIONS OF LAW AND DETERMINATIONS**

61. The site is a "facility" as defined in Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

62. Wastes and constituents thereof at the site, sent to the site, disposed of at the site, and/or transported to the site, as the site is identified in paragraph 9, are "hazardous substances" as defined in Section 101(14) of CERCLA, 42 U.S.C. Section 9601(14), or constitute "any pollutant or contaminant," that may present an imminent and substantial danger to public health or welfare under Section 104(a)(1) of CERCLA.

63. The presence of hazardous substances at the site or the past, present or potential migration of hazardous substances

currently located at or emanating from the site, constitute actual and/or threatened "releases" as defined in Section 101(22) of CERCLA, 42 U.S.C. § 9601(22).

64. Respondents are "persons" as defined in Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

65. Respondents are responsible parties under Sections 104, 107 and 122 of CERCLA, 42 U.S.C. Sections 9604, 9607 and 9622.

66. The actions required by this Consent Order are necessary to protect the public health or welfare or the environment, or in the public interest, 42 U.S.C. § 9622(a), are consistent with CERCLA and the NCP, 42 U.S.C. §§ 9604(a)(1), 9622(a), and will expedite effective remedial action and minimize litigation, 42 U.S.C. § 9622(a).

#### **VII. NOTICE**

67. By providing a copy of this Consent Order to the State, EPA is notifying the State of Ohio that this Order is being issued and that EPA is the lead agency for coordinating, overseeing, and enforcing the response action required by the Order.

#### **VIII. WORK TO BE PERFORMED**

68. All work performed under this Consent Order will be under the direction and supervision of qualified personnel. Within thirty (30) days of the effective date of this Order, and

before the work outlined below begins, the Respondents will notify EPA in writing of the names, titles, and qualifications of the personnel, including contractors, subcontractors, consultants and laboratories to be used in carrying out such work. The qualifications of the persons undertaking the work for Respondents will be subject to EPA's review, for verification that such persons meet minimum technical background and experience requirements. This Order is contingent on Respondents' demonstration to EPA's satisfaction that Respondents are qualified to perform properly and promptly the actions set forth in this Consent Order. If EPA disapproves in writing of any person(s)' technical qualifications, Respondents will notify EPA of the identity and qualifications of the replacements within thirty (30) days of the written notice. If EPA subsequently disapproves of the replacement(s), EPA reserves the right to terminate this Order and to conduct a complete RI/FS, and to seek reimbursement for costs and penalties from Respondents. During the course of the RI/FS, Respondents will notify EPA in writing of any changes or additions in the personnel used to carry out such work, providing their names, titles, and qualifications. EPA will have the same right to approve changes and additions to personnel as it has hereunder regarding the initial notification.

69. Respondents will conduct activities and submit

deliverables as provided by the attached RI/FS Statement of Work, for the development of the RI/FS. All such work will be conducted in accordance with CERCLA, the NCP, and EPA guidance including, but not limited to, the "Interim Final Guidance for Conducting Remedial Investigations and Feasibility Studies under CERCLA" (OSWER Directive # 9355.3-01), "Guidance for Data Usability in Risk Assessment" (OSWER Directive #9285.7-05) and guidance referenced therein, and guidance referenced in the Statement of Work, as may be amended or modified by EPA. The general activities that Respondents are required to perform are identified below, followed by a list of deliverables. The tasks that Respondents must perform are described more fully in the Statement of Work and guidance. The activities and deliverables identified below will be developed as provisions in the work plan and sampling and analysis plan, and will be submitted to EPA as provided. All work performed under this Consent Order will be in accordance with the schedules herein, and in full accordance with the standards, specifications, and other requirements of the work plan and sampling and analysis plan, as initially approved or modified by EPA, and as may be amended or modified by EPA from time to time. For the purposes of this Order, day means calendar day unless otherwise noted in the Order.

A. Task I: Scoping

EPA determines the site-specific objectives of the RI/FS and devises a general management approach for the site, as stated in the attached Statement of Work. Respondents will conduct the remainder of scoping activities as described in the attached Statement of Work and referenced guidance. At the conclusion of the project planning phase, Respondent will provide EPA with the following deliverables:

1. RI/FS Work Plan. Within ninety (90) days of the effective date of this Order, Respondents will submit to EPA and Ohio EPA a complete RI/FS work plan. If EPA disapproves of or requires revisions to the RI/FS work plan, in whole or in part, Respondents will amend and submit to EPA a revised work plan which is responsive to the directions in all EPA comments, within twenty-one (21) days of receiving EPA's comments.

2. Sampling and Analysis Plan. Within ninety (90) days of the effective date of this Order, Respondents will submit to EPA the sampling and analysis plan. This plan will consist of a field sampling plan (FSP) and a quality assurance project plan (QAPP), as described in the Statement of Work and guidances. If EPA disapproves of or requires revisions to the sampling and analysis plan, in whole or in part, Respondents will amend and submit to EPA a revised sampling and analysis plan which is responsive to the directions in all EPA comments, within twenty-one (21) days of receiving EPA's comments.

3. Site Health and Safety Plan. Within ninety (90) days of the effective date of this Order, Respondents will submit to EPA the site health and safety plan. Following approval or modification by EPA, the RI/FS work plan and the sampling and analysis plan are incorporated by reference herein.

B. Task II: Community Relations Plan

EPA will prepare a community relations plan, in accordance with EPA guidance and the NCP. Respondents will provide information supporting EPA's community relations programs.

C. Task III: Site Characterization Following EPA approval or modification of the work plan and sampling and analysis plan, Respondents will implement the provisions of these plans to characterize the site. Respondents will complete site characterization within six (6) months of EPA approval or modification of the work plan and sampling and analysis plan. Respondents will provide EPA with analytical data within forty-five (45) days of each sampling activity, in an electronic format (see [http:// www.epa.gov/region5/superfund/edman](http://www.epa.gov/region5/superfund/edman) for instructions) showing the location, medium and results. Within seven (7) days of completion of field activities, Respondents will notify EPA in writing. During site characterization, Respondents will provide EPA with a Preliminary Site Characterization Summary. Within ninety (90) days of completion of the field sampling and analysis, as specified in the work

plan, Respondents will submit a site characterization summary to EPA.

D. Task IV: Draft Remedial Investigation Report Within 180 days of receipt, Respondents will submit a draft remedial investigation report consistent with the Statement of Work, work plan, sampling and analysis plan. If EPA disapproves of or requires revisions to the remedial investigation report, in whole or in part, Respondents will amend and submit to EPA a revised remedial investigation report which is responsive to the directions in all EPA comments, within thirty (30) days of receiving EPA's comments.

E. Task V: Treatability Studies. Respondents will conduct treatability studies, except where Respondents can demonstrate to EPA's satisfaction that they are not needed. The major components of the treatability studies include determination of the need for and scope of studies, the design of the studies, and the completion of the studies, as described in the Statement of Work. During treatability studies, Respondents will provide EPA with the following deliverables:

1. Identification of Candidate Technologies

Memorandum. This memorandum will be submitted within 180 days of the effective date of this Order. If EPA disapproves of or requires revisions to the technical memorandum identifying candidate technologies, in whole



or in part, Respondents will amend and submit to EPA a revised technical memorandum identifying candidate technologies which is responsive to the directions in all EPA comments, within twenty one (21) days of receiving EPA's comments.

2. Treatability Testing Statement of Work. If EPA determines that treatability testing is required, within twenty-one (21) days thereafter [or as specified by EPA], Respondents will submit a treatability testing statement of work.

3. Treatability Testing Work Plan. Within thirty (30) days of submission of the treatability testing statement of work, Respondents will submit a treatability testing work plan, including a schedule. If EPA disapproves of or requires revisions to the treatability testing work plan, in whole or in part, Respondents will amend and submit to EPA a revised treatability testing work plan which is responsive to the directions in all EPA comments, within twenty-one (21) days of receiving EPA's comments.

4. Treatability Study Sampling and Analysis Plan. Within sixty (60) days of the identification of the need for a separate or revised QAPP or FSP, Respondents will submit a treatability study sampling and analysis plan.

If EPA disapproves of or requires revisions to the treatability study sampling and analysis plan, in whole or in part, Respondents will amend and submit to EPA a revised treatability study sampling and analysis plan which is responsive to the directions in all EPA comments, within twenty-one (21) days of receiving EPA's comments.

5. Treatability Study Site Health and Safety Plan. Within sixty (30) days of the identification of the need for a revised health and safety plan, Respondents will submit a treatability study site health and safety plan.

6. Treatability Study Evaluation Report. Within thirty (30) days of completion of any treatability testing, Respondents will submit a treatability study evaluation report as provided in the Statement of Work and work plan. If EPA disapproves of or requires revisions to the treatability study report, in whole or in part, Respondents will amend and submit to EPA a revised treatability study report which is responsive to the directions in all EPA comments, within twenty-one (21) days of receiving EPA's comments.

F. Task V: Development and Screening of Alternatives.

Respondents will develop an appropriate range of waste management options that will be evaluated through the

development and screening of alternatives, as provided in the Statement of Work and work plan. During the development and screening of alternatives, Respondents will provide EPA with the following deliverables:

1. Memorandum on Remedial Action Objectives. Within ninety (90) days of completion of the field sampling and analysis, as specified in the work plan, Respondents will submit a memorandum on remedial action objectives to EPA.

2. Memorandum on Development and Preliminary Screening of Alternatives. Assembled Alternatives Screening Results and Final Screening. Within ninety (90) days of completion of the field sampling and analysis, as specified in the work plan, the Respondents will submit a memorandum summarizing the development and screening of remedial alternatives, including an alternatives array document as described in the Statement of Work.

G. Task VI: Detailed Analysis of Alternatives. Respondents will conduct a detailed analysis of remedial alternatives, as described in the Statement of Work and work plan. During the detailed analysis of alternatives, Respondents will provide EPA with the following deliverables and presentation:

1. Report on Comparative Analysis and Presentation to EPA. Within ninety (90) days of submission of a

memorandum on the development and screening of remedial alternatives, Respondents will submit a report on comparative analysis to EPA summarizing the results of the comparative analysis performed between the remedial alternatives. If EPA disapproves of or requires revisions to the report on comparative analysis, Respondent(s) will amend and submit to EPA a revised report on comparative analysis which is responsive to the directions in all EPA comments, within twenty-one (21) days of receiving EPA's comments. Within two (2) weeks of submitting the original report on comparative analysis, Respondents will make a presentation to EPA during which Respondents will summarize the findings of the remedial investigation and remedial action objectives, and present the results of the nine (9) criteria evaluation and comparative analysis, as described in the Statement of Work.

2. Draft Feasibility Study Report. Within ninety (90) days of the presentation to EPA, Respondents will submit a draft feasibility study report which reflects the findings in EPA's baseline risk assessment. Respondents will refer to Table 6-5 of the RI/FS Guidance for report content and format. If EPA disapproves of or requires revisions to the draft feasibility study report in whole

or in part, Respondents will amend and submit to EPA a revised feasibility study report which is responsive to the directions in all EPA comments, within twenty-one (21) days of receiving EPA's comments. The report as amended, and the administrative record, will provide the basis for the proposed plan under CERCLA §§ 113(k) and 117(a), 42 U.S.C. §§ 9613 (k), 9617(a) and will document the development and analysis of remedial alternatives.

70. EPA reserves the right to comment on, modify and direct changes for all deliverables. At EPA's discretion, Respondents must fully correct all deficiencies and incorporate and integrate all information and comments supplied by EPA either in subsequent or resubmitted deliverables.

71. Respondents will not proceed further with any subsequent activities or tasks until receiving EPA approval for the following deliverables: RI/FS work plan and sampling and analysis plan, draft remedial investigation report, treatability testing work plan and sampling and analysis plan, and draft feasibility study report. While awaiting EPA approval on these deliverables, Respondents will proceed with all other tasks and activities which may be conducted independently of these deliverables, in accordance with the schedule set forth in this Consent Order.

72. Upon receipt of the draft FS report, EPA will

evaluate, as necessary, the estimates of the risk to the public and environment that are expected to remain after a particular remedial alternative has been completed.

73. For all remaining deliverables not enumerated above in paragraph 71, Respondents will proceed with all subsequent tasks, activities and deliverables without awaiting EPA approval on the submitted deliverable. EPA reserves the right to stop Respondents from proceeding further, either temporarily or permanently, on any task, activity or deliverable at any point during the RI/FS.

74. In the event that Respondents amend or revise a report, plan or other submittal upon receipt of EPA comments, if EPA subsequently disapproves of the revised submittal, or if subsequent submittals do not fully reflect EPA's directions for changes, EPA retains the right to seek stipulated or statutory penalties; perform its own studies, complete the RI/FS (or any portion of the RI/FS under CERCLA and the NCP, and seek reimbursement from the Respondents for its costs; and/or seek any other appropriate relief.

75. In the event that EPA takes over some of the tasks, but not the preparation of the RI/FS, Respondents will incorporate and integrate information supplied by EPA into the final RI/FS report.

76. Neither failure of EPA to expressly approve or

disapprove of Respondents' submissions within a specified time period(s), nor the absence of comments, will be construed as approval by EPA. Whether or not EPA gives express approval for Respondents' deliverables, Respondents are responsible for preparing deliverables acceptable to EPA.

77. Respondents will, prior to any off-site shipment of hazardous substances from the site to an out-of-state waste management facility, provide written notification to the appropriate state environmental official in the receiving state and to EPA's Designated Project Coordinator of such shipment of hazardous substances. However, the notification of shipments will not apply to any such off-site shipments when the total volume of such shipments will not exceed ten (10) cubic yards.

(a) The notification will be in writing, and will include the following information, where available: (1) the name and location of the facility to which the hazardous substances are to be shipped; (2) the type and quantity of the hazardous substances to be shipped; (3) the expected schedule for the shipment of the hazardous substances; and (4) the method of transportation. Respondents will notify the receiving state of major changes in the shipment plan, such as a decision to ship the hazardous substances to another facility within the same state, or to a facility in another state.

(b) The identity of the receiving facility and state will

be determined by Respondents following the award of the contract for the remedial investigation and feasibility study.

Respondent(s) will provide all relevant information, including information under the categories noted in paragraph 77(a) above, on the off-site shipments, as soon as practical after the award of the contract and before the hazardous substances are actually shipped.

#### **IX. BASELINE RISK ASSESSMENT**

78. Respondents will perform the baseline risk assessment. The major components of the baseline risk assessment include contaminant identification, exposure assessment, toxicity assessment, and human health and ecological risk characterization. Respondents will provide, after review of all the pertinent and available site characterization information and data, sufficient information concerning the baseline risks such that they can assess this information, along with the Remedial Action Objectives. This information submittal to the EPA by Respondents will be in the form of two or more baseline risk assessment memoranda. One memorandum will include a list of the chemicals of concern for human health and ecological effects and the corresponding toxicity values. The second memorandum will include a list of the current and potential future exposure scenarios, exposure assumptions, and exposure point concentrations that EPA plans to use in the



baseline risk assessment. The public may comment on these memoranda. However, the EPA is obligated to respond only to significant comments on the Record of Decision that are submitted during the formal public comment period. After considering any significant comments received, EPA will direct the Respondents to prepare a baseline risk assessment report based on the data collected by the Respondents during the site characterization. EPA will release this report to the public at the same time it releases the final RI report. Both reports will be put into the administrative record for the Site. EPA will respond to all significant comments on the memoranda or the baseline risk assessment that are resubmitted during the formal comment period in the Responsiveness Summary of the Record of Decision.

#### **X. MODIFICATION OF THE WORK PLAN**

79. If at any time during the RI/FS process, Respondents identify a need for additional data, a memorandum documenting the need for additional data will be submitted to the EPA Project Coordinator within twenty (20) days of identification. EPA in its discretion will determine whether the additional data will be collected by Respondents and whether it will be incorporated into reports and deliverables.

80. In the event of conditions posing an immediate threat to human health or welfare or the environment,

Respondents will notify EPA and the State immediately. In the event of unanticipated or changed circumstances at the site, Respondents will notify the EPA Project Coordinator by telephone within 24 hours of discovery of the unanticipated or changed circumstances. In addition to the authorities in the NCP, in the event that EPA determines that the immediate threat or the unanticipated or changed circumstances warrant changes in the work plan, EPA will modify or amend the work plan in writing accordingly. Respondents will perform the work plan as modified or amended.

81. EPA may determine that in addition to tasks defined in the initially approved work plan, other additional work may be necessary to accomplish the objectives of the RI/FS as set forth in the Statement of Work for this RI/FS. EPA may require that the Respondent perform these response actions in addition to those required by the initially approved work plan, including any approved modifications, if it determines that such actions are necessary for a complete RI/FS. Respondents will confirm their willingness to perform the additional work in writing to EPA within seven (7) days of receipt of the EPA request or Respondents will invoke dispute resolution. Subject to EPA resolution of any dispute, Respondents will implement the additional tasks which EPA determines are necessary. The additional work will be completed according to the standards,

specifications, and schedule set forth or approved by EPA in a written modification to the work plan or written work plan supplement. EPA reserves the right to conduct the work itself at any point, to seek reimbursement from Respondents later, and/or to seek any other appropriate relief.

#### **XI. QUALITY ASSURANCE**

82. Respondents will assure that work performed, samples taken and analyses conducted conform to the requirements of the Statement of Work, the QAPP and guidance identified therein. Respondents will assure that field personnel used by Respondents are properly trained in the use of field equipment and in chain of custody procedures.

#### **XII. FINAL RI/FS, PROPOSED, PLAN, PUBLIC COMMENT RECORD OF DECISION, ADMINISTRATIVE RECORD**

83. EPA retains the responsibility for the release to the public of the RI/FS report. EPA retains responsibility for the preparation and release to the public of the proposed plan and record of decision in accordance with CERCLA and the NCP.

84. Respondents will provide EPA with the final RI/FS report. EPA will provide Respondents with the final RI/FS report (if it differs from that submitted), proposed plan and record of decision.

85. EPA will determine the contents of the administrative record file for selection of the remedial action.

Respondents must submit to EPA documents developed during the course of the RI/FS upon which selection of the response action may be based. Respondents will provide copies of plans, task memoranda for further action, quality assurance memoranda and audits, raw data, field notes, laboratory analytical reports and other reports. Respondents must additionally submit any previous studies conducted under state, local or other federal authorities relating to selection of the response action, and all communications between Respondents and state, local or other federal authorities concerning selection of the response action. At EPA's discretion, Respondents may establish a community information repository at or near the site, to house one copy of the administrative record.

### **XIII. PROGRESS REPORTS AND MEETINGS**

86. Respondents will make presentations at, and participate in, meetings at the request of EPA during the initiation, conduct, and completion of the RI/FS. In addition to discussion of the technical aspects of the RI/FS, topics will include anticipated problems or new issues. Meetings will be scheduled at EPA's discretion.

87. In addition to the deliverables set forth in this Order, Respondents will provide to EPA monthly progress reports by the 10th day of the following month. At a minimum, with

respect to the preceding month, these progress reports will (1) describe the actions which have been taken to comply with this Consent Order during that month, (2) include all results of sampling and tests and all other data received by the Respondents, (3) describe work planned for the next two months with schedules relating such work to the overall project schedule for RI/FS completion and (4) describe all problems encountered and any anticipated problems, any actual or anticipated delays, and solutions developed and implemented to address any actual or anticipated problems or delays.

#### **XIV. SAMPLING, ACCESS, AND DATA AVAILABILITY/ADMISSIBILITY**

88. All results of sampling, tests, modeling or other data (including raw data) generated by Respondents, or on Respondents' behalf, during implementation of this Consent Order, will be submitted to EPA in the subsequent monthly progress report as described in Section XII of this Order. EPA will make available to the Respondents validated data generated by EPA unless it is exempt from disclosure by any federal or state law or regulation.

89. Respondents will verbally notify EPA at least fifteen (15) days prior to conducting significant field events as described in the Statement of Work, work plan or sampling and analysis plan. At EPA's verbal or written request, or the request of EPA's oversight assistant, Respondents will allow

split or duplicate samples to be taken by EPA (and its authorized representatives) of any samples collected by the Respondents in implementing this Consent Order. All split samples of Respondents will be analyzed by the methods identified in the QAPP.

90. At all reasonable times, EPA and its authorized representatives will have the authority to enter and freely move about all property at the Site and off-site areas where work, if any, is being performed, for the purposes of inspecting conditions, activities, the results of activities, records, operating logs, and contracts related to the site or Respondents and its contractor pursuant to this order; reviewing the progress of the Respondents in carrying out the terms of this Consent Order; conducting tests as EPA or its authorized representatives deem necessary; using a camera, sound recording device or other documentary type equipment; and verifying the data submitted to EPA by the Respondents. The Respondents will allow these persons to inspect and copy all records, files, photographs, documents, sampling and monitoring data, and other writings related to work undertaken in carrying out this Consent Order. Nothing herein will be interpreted as limiting or affecting EPA's right of entry or inspection authority under federal law. All parties with access to the site under this paragraph will comply with all approved health and safety plans.

91. The Respondents may assert a claim of business confidentiality covering part or all of the information submitted to EPA pursuant to the terms of this Consent Order under 40 C.F.R. Part 2, Subpart B, provided such claim is allowed by § 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7). This claim will be asserted in the manner described by 40 C.F.R. § 2.203(b) and substantiated at the time the claim is made. Information determined to be confidential by EPA will be given the protection specified in 40 C.F.R. Part 2. If no such claim accompanies the information when it is submitted to EPA, it may be made available to the public by EPA or the State without further notice to the Respondents. Respondents agree not to assert confidentiality claims with respect to any data related to site conditions, sampling, or monitoring.

92. In entering into this Order, Respondents waive any objections to any data gathered, generated, or evaluated by EPA, the State or Respondents in the performance or oversight of the work that has been verified according to the quality assurance/quality control (QA/QC) procedures required by the Consent Order or any EPA-approved work plans or sampling and analysis plans. If Respondents object to any other data relating to the RI/FS, Respondents will submit to EPA a report that identifies and explains their objections, describes the acceptable uses of the data, if any, and identifies any

limitations to the use of the data. The report must be submitted to EPA within fifteen (15) days of the monthly progress report containing the data.

93. If the site, or the off-site area that is to be used for access or is within the scope of the RI/FS, is owned in whole or in part by parties other than those bound by this Consent Order, Respondents will obtain, or use their best efforts to obtain, site access agreements from the present owner(s) within sixty (60) days of the effective date of this Consent Order. Such agreements will provide access for EPA, its contractors and oversight officials, the State and its contractors, and the Respondents or their authorized representatives, and such agreements will specify that Respondents are not EPA's representatives with respect to liability associated with site activities. Copies of such agreements will be provided to EPA prior to Respondents' initiation of field activities. Respondents' best efforts will include providing reasonable compensation to any off-site property owner. If access agreements are not obtained within the time referenced above, Respondents will immediately notify EPA of their failure to obtain access. EPA may obtain access for the Respondents, perform those tasks or activities with EPA contractors, or terminate the Consent Order in the event that Respondents cannot obtain access agreements. In the event that



EPA performs those tasks or activities with EPA contractors and does not terminate the Consent Order, Respondents will perform all other activities not requiring access to that site, and will reimburse EPA for all costs incurred in performing such activities. Respondents additionally will integrate the results of any such tasks undertaken by EPA into their reports and deliverables. Furthermore, the Respondents agree to indemnify the U.S. Government as specified in Section XXV of this Order. Respondents also will reimburse EPA for all costs and attorney fees incurred by the United States to obtain access for the Respondents pursuant to paragraph 114.

#### **XV. DESIGNATED PROJECT COORDINATORS**

94. Documents including reports, approvals, disapprovals, and other correspondence which must be submitted under this Consent Order, will be sent by certified mail, return receipt requested, to the following addressees or to any other addressees which the Respondents and EPA designate in writing:

(a) Documents to be submitted to EPA should be sent in triplicate to:

Gwendolyn Massenburg,  
Remedial Project Manager  
US EPA, Region 5  
77 West Jackson Blvd.  
Chicago, IL 60604

(b) Documents to be submitted to the Respondents should

be sent to [include number of copies]:

Name, Title,  
Organization,  
Street, City, State, Zip Code

95. On or before the effective date of this Consent Order, EPA and the Respondents will each designate their own Project Coordinator. Each Project Coordinator will be responsible for overseeing the implementation of this Consent Order. To the maximum extent possible, communications between the Respondents and EPA will be directed to the Project Coordinator by mail, with copies to such other persons as EPA, the State, and Respondents may respectively designate. Communications include, but are not limited to, all documents, reports, approvals, and other correspondence submitted under this Consent Order.

96. EPA and the Respondents each have the right to change their respective Project Coordinator. The other party must be notified in writing at least ten (10) days prior to the change.

97. EPA's Project Coordinator will have the authority lawfully vested in a Remedial Project Manager (RPM) and On-Scene Coordinator (OSC) by the NCP. In addition, EPA's Project Coordinator will have the authority, consistent with the NCP, to halt any work required by this Consent Order, and to take any necessary response action when she/he determines that conditions

at the site may present an immediate endangerment to public health or welfare or the environment. The absence of the EPA Project Coordinator from the area under study pursuant to this Consent Order will not be cause for the stoppage or delay of work.

98. EPA will arrange for a qualified person to assist in its oversight and review of the conduct of the RI/FS, as required by Section 104(a) of CERCLA, 42 U.S.C. § 9604(a). The oversight assistant may observe work and make inquiries in the absence of EPA, but is not authorized to modify the work plan.

#### **XVI. OTHER APPLICABLE LAWS**

99. Respondents will comply with all laws that are applicable when performing the RI/FS. No local, state, or federal permit will be required for any portion of any action conducted entirely on-site, including studies, where such action is selected and carried out in compliance with Section 121 of CERCLA, 42 U.S.C. § 9621.

#### **XVII. RECORD PRESERVATION**

100. All records and documents in EPA's and Respondents' possession that relate in any way to the site will be preserved during the conduct of this Consent Order and for a minimum of 10 years after commencement of construction of any remedial action. The Respondents will acquire and retain copies of all documents that relate to the site and are in the

possession of its employees, agents, accountants, contractors, or attorneys. After this 10 year period, the Respondents will notify EPA at least ninety (90) days before the documents are scheduled to be destroyed. If EPA requests that the documents be saved, the Respondents will, at no cost to EPA, give EPA the documents or copies of the documents.

#### **XVIII. DISPUTE RESOLUTION**

101. Any disputes concerning activities or deliverables required under this Order, excluding the baseline risk assessment, for which dispute resolution has been expressly provided for, will be resolved as follows: If the Respondents object to any EPA notice of disapproval or requirement made pursuant to this Consent Order, Respondents will notify EPA's Project Coordinator in writing of their objections within fourteen (14) days of receipt of the disapproval notice or requirement. Respondents' written objections will define the dispute, state the basis of Respondents' objections, and be sent certified mail, return receipt requested. EPA and the Respondents then have an additional fourteen (14) days to reach agreement. If an agreement is not reached within fourteen (14) days, Respondents may request a determination by EPA's Director, Superfund Division. The Director's determination is EPA's final decision. Respondents will proceed in accordance with EPA's final decision regarding the matter in dispute, regardless of

whether Respondents agree with the decision. If the Respondents do not agree to perform or do not actually perform the work in accordance with EPA's final decision, EPA reserves the right in its sole discretion to conduct the work itself, to seek reimbursement from the Respondents, to seek enforcement of the decision, to seek stipulated penalties, and/or to seek any other appropriate relief.

102. Respondents are not relieved of their obligations to perform and conduct activities and submit deliverables on the schedule set forth in the work plan, while a matter is pending in dispute resolution. The invocation of dispute resolution does not stay stipulated penalties under this Order.

#### **XIX. DELAY IN PERFORMANCE/STIPULATED PENALTIES**

103. For each day that the Respondents fail to complete a deliverable in a timely manner or fail to produce a deliverable of acceptable quality, or otherwise fail to perform in accordance with the requirements of this Order, Respondents will be liable for stipulated penalties. Penalties begin to accrue on the day that performance is due or a violation occurs, and extend through the period of correction. Where a revised submission by Respondents is required, stipulated penalties will continue to accrue until a satisfactory deliverable is produced. EPA will provide written notice for violations that are not based on timeliness; nevertheless, penalties will accrue from

the day a violation commences. Payment will be due within thirty (30) days of receipt of a demand letter from EPA.

104. Respondents will pay interest on the unpaid balance, which will begin to accrue at the end of the 30-day period, at the rate established by the Department of Treasury pursuant to 30 U.S.C. § 3717. Respondents will further pay a handling charge of 1 percent, to be assessed at the end of each 31 day period, at a rate established by the Department of Treasury pursuant to 30 U.S.C. § 3717. Respondents will further pay and a six percent (6%) per annum penalty, to be assessed if the penalty is not paid in full within ninety (90) days after it is due.

105. Respondents must make all payments by certified check payable to "Hazardous Substances Superfund" and forward the check to:

U.S. Environmental Protection Agency, Region 5  
Superfund Accounting  
P.O. Box 70753  
Chicago, Illinois 60673

Checks must identify the name of the site, the site identification number, the account number, and the title of this Order. A copy of the check and/or transmittal letter must be forwarded to the EPA Project Coordinator.

106. For the following major deliverables, stipulated penalties will accrue in the amount of \$2,500 per day, per violation, for the first seven days (7) of noncompliance; \$5,000

per day, per violation, for the 8th through 14th day of noncompliance; \$10,000 per day, per violation, for the 15th day through the 30th day; and \$27,500 per day per violation for all violations lasting beyond thirty (30) days.

- 1) An original and any revised work plan.
- 2) An original and any revised sampling and analysis plan.
- 3) An original and any revised remedial investigation report.
- 4) An original and any revised treatability testing work plan.
- 5) An original and any revised treatability study sampling and analysis plan.
- 6) An original and any revised feasibility study report.

107. For the following interim deliverables, stipulated penalties will accrue in the amount of \$2,500 per day, per violation, for the first week of noncompliance; \$5,000 per day, per violation, for the 8th through 14th day of noncompliance; \$10,000 per day, per violation, for the 15th day through the 30th day of noncompliance; and \$27,500 per day per violation for all violations lasting beyond 30 days.

- 1) Technical memorandum on modeling of site characteristics.
- 2) Preliminary site characterization summary.
- 3) Summary of RI data.
- 4) Identification of candidate technologies memorandum.
- 5) Treatability testing statement of work.
- 6) Treatability study evaluation report.
- 7) Memorandum on remedial action objectives.
- 8) Memoranda on development and preliminary screening of alternatives, assembled alternatives screening results, and final screening.
- 9) Comparative analysis report.

108. For the monthly progress reports, stipulated penalties will accrue in the amount of \$2,500 per day, per violation, for the first week of noncompliance; \$5,000 per day, per violation, for the 8th through 14th day of noncompliance; \$10,000 per day, per violation, for the 15th day through the 30th day; and \$27,000 per day, per violation, for all violations lasting beyond thirty (30) days.

109. Respondents may dispute EPA's right to the stated amount of penalties by invoking the dispute resolution procedures under Section XVII herein. Penalties will accrue but need not be paid during the dispute resolution period. If Respondents do not prevail upon resolution, all penalties will be due to EPA within thirty (30) days of resolution of the dispute. If Respondents prevail upon resolution, no penalties will be paid.

110. In the event that EPA provides for corrections to be reflected in the next deliverable and does not require resubmission of that deliverable, stipulated penalties for that interim deliverable will cease to accrue on the date of such decision by EPA.

111. The stipulated penalties provisions do not preclude EPA from pursuing any other remedies or sanctions which are available to EPA because of the Respondents' failure to comply with this Consent Order, including but not limited to



conduct of all or part of the RI/FS by EPA. Payment of stipulated penalties does not alter Respondents' obligation to complete performance under this Consent Order.

#### **XX. FORCE MAJEURE**

112. "Force majeure", for purposes of this Consent Order, is defined as any event arising from causes entirely beyond the control of the Respondents and of any entity controlled by Respondents, including their contractors and subcontractors, that delays the timely performance of any obligation under this Consent Order notwithstanding Respondents' best efforts to avoid the delay. The requirement that the Respondents exercise "best efforts to avoid the delay" includes using best efforts to anticipate any potential force majeure event and best efforts to address the effects of any potential force majeure event (1) as it is occurring and (2) following the potential force majeure event, such that the delay is minimized to the greatest extent practicable. Examples of events that are not force majeure events include, but are not limited to, increased costs or expenses of any work to be performed under this Order or the financial difficulty of Respondents to perform such work.

113. If any event occurs or has occurred that may delay the performance of any obligation under this Order, whether or not caused by a force majeure event, Respondents will notify by

telephone the Remedial Project Manager or, in his or her absence, the Director of the Superfund Division, EPA Region 5, within 48 hours of when the Respondents knew or should have known that the event might cause a delay. Within five (5) business days thereafter, Respondents will provide in writing the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to mitigate the effect of the delay; and a statement as to whether, in the opinion of Respondents, such event may cause or contribute to an endangerment to public health, welfare or the environment. Respondents will exercise best efforts to avoid or minimize any delay and any effects of a delay. Failure to comply with the above requirements will preclude Respondents from asserting any claim of force majeure.

114. If EPA agrees that the delay or anticipated delay is attributable to force majeure, the time for performance of the obligations under this Order that are directly affected by the force majeure event will be extended by agreement of the parties, pursuant to section XXVI of this Order, for a period of time not to exceed the actual duration of the delay caused by the force majeure event. An extension of the time for performance of the obligation directly affected by the force majeure event will not, of itself, extend the time for

performance of any subsequent obligation.

115. If EPA does not agree that the delay or anticipated delay has been or will be caused by a force majeure event, or does not agree with Respondents on the length of the extension, the issue will be subject to the dispute resolution procedures set forth in Section XVII of this Order. In any such proceeding, to qualify for a force majeure defense, Respondents will have the burden of demonstrating by a preponderance of the evidence that the delay or anticipated delay has been or will be caused by a force majeure event, that the duration of the delay was or will be warranted under the circumstances, that Respondents did exercise or are exercising due diligence by using their best efforts to avoid and mitigate the effects of the delay, and that Respondents complied with the requirements of paragraph 113.

116. Should Respondents carry the burden set forth in paragraph 115, the delay at issue will be deemed not to be a violation of the affected obligation of this Consent Order.

#### **XXI. REIMBURSEMENT OF PAST COSTS**

117. Within fifteen (15) days of the effective date of this Order, Respondents will remit a certified or cashiers check to EPA in the amount of \$408,013.80 as demanded in the attached RI/FS Special Notice Letter dated June 22, 2001 together with interest that has accrued thereon at the rate of interest

specified for the Hazardous Substances Superfund under CERCLA Section 107(a), 42 U.S.C. § 9607(a), for all past response costs incurred by the United States at this site to date.

118. Checks must be made payable to the "Hazardous Substances Superfund" and must include the name of the Site, the Site identification number, the operable unit, if any, the Regional Lock Box Number account number and the title of this Order. Checks must be forwarded to:

U.S. Environmental Protection Agency  
Superfund Accounting  
P.O. Box 70753  
Chicago, Illinois 60673

119. A copy of the check must be sent simultaneously to the EPA Project Coordinator.

#### **XXII. REIMBURSEMENT OF RESPONSE AND OVERSIGHT COSTS**

120. Following the issuance of this Consent Order, EPA will submit to the Respondents on a periodic basis an accounting of all response costs including oversight costs incurred by the U.S. Government with respect to this RI/FS. Response costs may include, but are not limited to, costs incurred by the U.S. Government in overseeing Respondents' implementation of the requirements of this Order and activities performed by the government as part of the RI/FS and community relations, including any costs incurred while obtaining access. Costs will include all direct and indirect costs, including, but not limited to, time and travel costs of EPA personnel and

associated indirect costs, contractor costs, cooperative agreement costs, compliance monitoring, including the collection and analysis of split samples, inspection of RI/FS activities, site visits, discussions regarding disputes that may arise as a result of this Consent Order, review and approval or disapproval of reports, costs of performing baseline risk assessment, and costs of redoing any of Respondents' tasks. Any necessary summaries, including, but not limited to, EPA's certified Agency Financial Management Systems summary data (itemized cost summaries), or such other summary as certified by EPA, will serve as basis for payment demands.

121. Respondent will, within thirty (30) days of receipt of each accounting, remit a certified or cashier's check for the amount of those costs. Interest will accrue from the later of: the date payment of a specified amount is demanded in writing; or the date of the expenditure. The interest rate is the rate of interest on investments for the Hazardous Substances Superfund in Section 107(a) of CERCLA, 42 U.S.C. § 9607(a).

122. Certified checks must be made payable to the Hazardous Substances Superfund and must include the name of the site, the site identification number, the account number and the title of this Order. Checks must be forwarded to:

U.S. Environmental Protection Agency  
Superfund Accounting  
P.O. Box 70753  
Chicago, Illinois 60653

123. Copies of the transmittal letter and check must be sent simultaneously to the EPA Project Coordinator.

124. Respondents agree to limit any disputes concerning costs to accounting errors and the inclusion of costs outside the scope of this Consent Order. Respondents will identify any contested costs and the basis of their objection. All undisputed costs will be remitted by Respondents in accordance with the schedule set forth above. Disputed costs will be paid by Respondents into an escrow account while the dispute is pending. Respondents bear the burden of establishing an EPA accounting error or the inclusion of costs outside the scope of this Consent Order.

#### **XXIII. RESERVATIONS OF RIGHTS AND REIMBURSEMENT OF OTHER COSTS**

125. EPA reserves the right to bring an action against the Respondents under Section 107 of CERCLA, 42 U.S.C.

§ 9607(a), for recovery of all response costs including oversight costs, incurred by the United States at the site that are not reimbursed by the Respondents, any costs incurred in the event that EPA performs the RI/FS or any part thereof, and any future costs incurred by the United States in connection with response activities conducted under CERCLA at this site.

126. EPA reserves the right to bring an action against Respondents to enforce the past costs and response and oversight cost reimbursement requirements of this Consent Order, to

collect stipulated penalties assessed pursuant to Section XVIII of this Consent Order, and to seek penalties pursuant to Section 109 of CERCLA, 42 U.S.C. § 9609.

127. Except as expressly provided in this Order, each party reserves all rights and defenses it may have. Nothing in this Consent Order will affect EPA's removal authority or EPA's response or enforcement authorities including, but not limited to, the right to seek injunctive relief, stipulated penalties, statutory penalties, and/or punitive damages.

128. Following satisfaction of the requirements of this Consent Order, Respondents will have resolved their liability to EPA for the work performed by Respondents pursuant to this Consent Order. Respondents are not released from liability, if any, for any response actions taken beyond the scope of this Order regarding removals, other operable units, remedial design/remedial action of this operable unit, or activities arising pursuant to Section 121(c) of CERCLA, 42 U.S.C. § 9607(a).

#### **XXIV. DISCLAIMER**

129. By signing this Consent Order and taking actions under this Order, the Respondents do not necessarily agree with EPA's Findings of Fact and Conclusions of Law. Furthermore, the participation of the Respondents in this Order will not be considered an admission of liability and is not admissible in

evidence against the Respondents in any judicial or administrative proceeding other than a proceeding by the United States, including EPA, to enforce this Consent Order or a judgment relating to it. Respondents retain their rights to assert claims against other potentially responsible parties at the site. However, the Respondents agree not to contest the validity or terms of this Order, or the procedures underlying or relating to it in any action brought by the United States, including EPA, to enforce its terms.

#### **XXV. OTHER CLAIMS**

130. In entering into this Order, Respondents waive any right to seek reimbursement under Section 106(b) of CERCLA. Respondents also waive any right to present a claim under Section 111 or 112 of CERCLA. This Order does not constitute any decision on preauthorization of funds under Section 111(a)(2) of CERCLA. Respondents further waive all other statutory and common law claims against EPA, including, but not limited to, contribution and counterclaims, relating to or arising out of conduct of the RI/FS.

131. Nothing in this Order will constitute or be construed as a release from any claim, cause of action or demand in law or equity against any person, firm, partnership, subsidiary or corporation not a signatory to this Consent Order for any liability it may have arising out of or relating in any



way to the generation, storage, treatment, handling, transportation, release, or disposal of any hazardous substances, pollutants, or contaminants found at, taken to, or taken from the site.

132. Respondents will bear their own costs and attorneys fees.

#### **XXVI. FINANCIAL ASSURANCE, INSURANCE, AND INDEMNIFICATION**

133. Respondents will establish and maintain a financial instrument or trust account or other financial mechanism acceptable to EPA, funded sufficiently to perform the work and any other obligations required under this Consent Order, including a margin for cost overruns. Within 15 days after the effective date of this Consent Order, Respondents will fund the financial instrument or trust account sufficiently to perform the work required under this Consent Order projected for the period beginning with the effective date of the Order through September 30, 2002. Beginning October 1, 2002, and on or before the 15th calendar day of each calendar year quarter thereafter, Respondent(s) will fund the financial instrument or trust account sufficiently to perform the work and other activities required under this Order projected for the succeeding calendar year quarter.

134. If at any time the net worth of the financial instrument or trust account is insufficient to perform the work

and other obligations under the Order for the upcoming quarter, Respondent(s) will provide written notice to EPA within seven (7) days after the net worth of the financial instrument or trust account becomes insufficient. The written notice will describe why the financial instrument or trust account is funded insufficiently and explain what actions have been or will be taken to fund the financial instrument or trust account adequately.

135. (a) Prior to commencement of any work under this Order, Respondents will secure, and will maintain in force for the duration of this Order, and for two years after the completion of all activities required by this Consent Order, Comprehensive General Liability ("CGL") and automobile insurance, with limits of \$10 million dollars, combined single limit, naming as insured the United States. The CGL insurance will include Contractual Liability Insurance in the amount of \$1,000,000 per occurrence, and Umbrella Liability Insurance in the amount of \$2 million per occurrence.

(b) Respondents will also secure, and maintain in force for the duration of this Order and for two years after the completion of all activities required by this Consent Order the following:

i. Professional Errors and Omissions Insurance in the amount of \$1,000,000.00 per occurrence.

ii. Pollution Liability Insurance in the amount of \$1,000,000.00 per occurrence, covering as appropriate both general liability and professional liability arising from pollution conditions.

(c) For the duration of this Order, Respondents will satisfy, or will ensure that their contractors or subcontractors satisfy, all applicable laws and regulations regarding the provision of employer's liability insurance and workmen's compensation insurance for all persons performing work on behalf of the Respondents, in furtherance of this Order.

(d) If Respondents demonstrate by evidence satisfactory to EPA that any contractor or subcontractor maintains insurance equivalent to that described above, or insurance covering the same risks but in a lesser amount, then with respect to that contractor or subcontractor Respondent need provide only that portion of the insurance described above which is not maintained by the contractor or subcontractor.

(e) Prior to commencement of any work under this Order, and annually thereafter on the anniversary of the effective date of this Order, Respondents will provide to EPA certificates of such insurance and a copy of each insurance policy.

136. At least seven (7) days prior to commencing any work under this Consent Order, Respondents will certify to EPA

that the required insurance has been obtained by that contractor.

137. The Respondents agree to indemnify and hold the United States Government, its agencies, departments, agents, and employees harmless from any and all claims or causes of action arising from or on account of acts or omissions of Respondents, their employees, agents, servants, receivers, successors, or assignees, or any persons including, but not limited to, firms, corporations, subsidiaries and contractors, in carrying out activities under this Consent Order. The United States Government or any agency or authorized representative thereof will not be held as a party to any contract entered into by Respondents in carrying out activities under this Consent Order.

#### **XXVII. EFFECTIVE DATE AND SUBSEQUENT MODIFICATION**

138. The effective date of this Consent Order will be the date it is signed by EPA.

139. This Consent Order may be amended by mutual agreement of EPA and Respondents. Amendments will be in writing and will not be effective if signed by someone who does not have the authority to sign amendments to the Consent Order.

140. No informal advice, guidance, suggestions, or comments by EPA regarding reports, plans, specifications, schedules, and any other writing submitted by the Respondents will be construed as relieving the Respondents of their

obligation to obtain such formal approval as may be required by this Order. Any deliverables, plans, technical memoranda, reports (other than progress reports), specifications, schedules and attachments required by this Consent Order are, upon approval by EPA, incorporated into this Order.

#### **XXVIII. TERMINATION AND SATISFACTION**

141. This Consent Order will terminate when the Respondents demonstrate in writing and certify to the satisfaction of EPA that all activities required under this Consent Order, including any additional work, payment of past costs, response and oversight costs, and any stipulated penalties demanded by EPA, have been performed and EPA has approved the certification. This notice will not, however, terminate Respondents' obligation to comply with Sections XVI, XXI, and XXII of this Consent Order.

142. The certification will be signed by a responsible official representing each Respondent. Each representative will make the following attestation: "I certify that the information contained in or accompanying this certification is true, accurate, and complete." For purposes of this Consent Order, a responsible official is a corporate official who is in charge of a principal business function.

BY: \_\_\_\_\_  
William Muno, Director  
Superfund Division, Region 5  
U.S. Environmental Protection Agency

DATE: \_\_\_\_\_

IN RE: CHEMICAL RECOVERY SYSTEMS, INC, ELYRIA OHIO

DOCKET NO.:

Administrative Order on Consent  
For Remedial Investigation/Feasibility Study

BY: \_\_\_\_\_ DATE: \_\_\_\_\_

Title

IN RE:CHEMICAL RECOVERY SYSTEMS, INC, ELYRIA OHIO

DOCKET NO.:

Administrative Order on Consent  
For Remedial Investigation/Feasibility Study

BY: \_\_\_\_\_ DATE: \_\_\_\_\_

Title \_\_\_\_\_



STATEMENT OF WORK  
FOR PRP-CONDUCTED  
REMEDIAL INVESTIGATION AND FEASIBILITY STUDY  
AT  
CHEMICAL RECOVERY SYSTEMS INC.  
ELYRIA, OHIO

The purpose of this remedial investigation/feasibility study (RI/FS) is to investigate the nature and extent of contamination for the Chemical Recovery Systems Inc. (Site), as generally described at paragraph 2, Section I of the Administrative Order by Consent (AOC) and develop and evaluate potential remedial alternatives. It is also the purpose of this RI/FS to require the Respondents to gather sufficient data, samples and other information, in consultation with the Trustees, to enable the completion of an injury determination and other appropriate natural resource damage assessment activities consistent with 15 CFR Part 990 and 43 CFR Part 11. The data, samples and other information gathered to enable the completion of an injury determination and other appropriate natural resource damage assessment activities must be used to coordinate remedial activity and the restoration, rehabilitation or replacement of, or compensation for, injured natural resources. The RI and FS are interactive and must be conducted concurrently so that the data collected in the RI influences the development of remedial alternatives in the FS, which in turn affects the data needs and the scope of treatability studies.

The Respondents must conduct this RI/FS and must produce draft and final RI/FS reports that are in accordance with this statement of work, the Guidance for Conducting Remedial Investigations and Feasibility Studies Under CERCLA (U.S. EPA, Office of Emergency and Remedial Response, October 1988), and any other guidances that U.S. EPA and Ohio EPA use in conducting a RI/FS (a list of the primary guidances are attached), as well as any additional requirements in the Administrative Order on Consent. The RI/FS Guidance describes the report format and the required report content. The Respondents must furnish all necessary personnel, materials, and services needed, or incidental to, performing the RI/FS, except as otherwise specified in the administrative order.

The Respondents must provide U.S. EPA and Ohio EPA with a copy of all deliverables or documents required as part of this statement of work for approval. U.S. EPA in consultation with the Ohio EPA will be responsible for the selection of a site remedy and will document this selection in a Record of Decision (ROD). The remedial action alternative selected by U.S. EPA must meet the cleanup standards specified in CERCLA Section 121. That is, the selected remedial action will be protective of human health and the environment, will be in compliance with, or

include a waiver of, applicable or relevant and appropriate requirements of other laws, will be cost-effective, will utilize permanent solutions and alternative treatment technologies or resource recovery technologies, to the maximum extent practicable, and will address the statutory preference for treatment as a principal element. The final RI/FS report and the baseline risk assessment, as adopted by U.S. EPA and Ohio EPA, will, with the administrative record, form the basis for the selection of the site's remedy and will provide the information necessary to support the development of the ROD.

As specified in CERCLA Section 104(a)(1), as amended by SARA, U.S. EPA and Ohio EPA will provide oversight of the Respondent's activities throughout the RI/FS, including all field sampling activities. The Respondents must support U.S. EPA's and Ohio EPA's initiation and conduct of activities related to the implementation of oversight activities. Oversight activities will be coordinated between U.S. EPA, Ohio EPA, and other agencies.

All correspondence, communication, and submittals from Respondents shall be directed to the following and additional individuals they identify:

Gwendolyn Massenburg  
Remedial Project Manager  
United States Environmental Protection Agency  
77 West Jackson Blvd., Mailcode SR-6J  
Chicago, Illinois 60604-3590  
Phone (312) 886-0983  
FAX (312) 886-4071  
Email "Massenburg.Gwendolyn@epa.gov"

Lawrence Antonelli  
Ohio Environmental Protection Agency  
Northeast District Office  
2110 East Aurora Road  
Twinsburg, Ohio 44087  
Phone (330) 963-1127  
FAX (330) 487-0769  
Email "larry.antonelli@epa.state.oh.us"

A. TASK I - SCOPING (RI/FS Guidance, Chapter 2)

Scoping is the initial planning process of the RI/FS and is initiated by U.S. EPA and Ohio EPA prior to issuing special notice. During this time, the site-specific objectives of the RI/FS, including the preliminary remediation goals (PRGs), are determined by U.S. EPA. Scoping is therefore initiated prior to negotiations between the PRPs, U.S. EPA and Ohio EPA, and is continued, repeated as necessary, and refined throughout the

RI/FS process. In addition to developing the site specific objectives of the RI/FS, U.S. EPA will determine a general management approach for the site. Consistent with the general management approach, the specific project scope will be planned by the Respondent, U.S. EPA and Ohio EPA. The Respondents must document the specific project scope in a work plan. Because the work required to perform a RI/FS is not fully known at the onset, and is phased in accordance with a site's complexity and the amount of available information, it may be necessary to modify the work plan during the RI/FS to satisfy the objectives of the study.

The objectives for the Site located in the State of Ohio have been determined preliminarily, based on available information, to be the following:

- Prevention or abatement of actual or potential exposure to nearby human populations, animals, or the food chain from hazardous substances pollutants or contaminants;
- Prevention or abatement of actual or potential contamination of drinking water supplies or sensitive ecosystems;
- Treatment or elimination of high levels of hazardous substances, pollutants, or contaminants in soils or sediments largely at or near the surface that may migrate;
- Mitigation or abatement of other situations or factors that may pose threats to public health, welfare, or the environment.

The strategy for the general management of the Site will include the following:

- a. Conduct a remedial investigation to determine fully the nature and extent of the release or threatened release of hazardous substances, pollutants, or contaminants from the Site;
- b. Perform a feasibility study to identify and evaluate alternatives for the appropriate extent of remedial action to prevent or mitigate the migration or the release or threatened release of hazardous substances, pollutants, or contaminants from the site; and
- c. Conduct removal actions to address priority areas pursuant to the AOC, any amendments thereof, subsequently issued Orders, and the Scope of Work for Engineering Evaluation and Cost Analysis.
- d. Gather sufficient data, samples and other information, in consultation with Trustees, to enable the completion of an injury determination and other appropriate natural resource damage assessment activities consistent with 15 CFR Part 990 and 43 CFR

Part 11. The data, samples and other information gathered to enable the completion of an injury determination and other appropriate natural resource damage assessment activities will be used to coordinate remedial activity and the restoration, rehabilitation or replacement of, or compensation for, injured natural resources.

When scoping the specific aspects of a project, the Respondents must meet with U.S. EPA and Ohio EPA, and the Trustees, to discuss all project planning decisions and special concerns associated with the site. The following activities shall be performed by the Respondents as a function of the project planning process.

a. Site Background (2.2)

The Respondents must gather and analyze the existing site background information and will conduct a site visit to assist in planning the scope of the RI/FS.

Collect and analyze existing data and document the need for additional data (2.2.2; 2.2.6; 2.2.7)

Before planning RI/FS activities, all existing site data must be thoroughly compiled and reviewed by the Respondents. Specifically, this will include presently available data relating to the varieties and quantities of hazardous substances at the site, and past disposal practices. This will also include results from any previous sampling events that may have been conducted. The Respondents must refer to Table 2-1 of the RI/FS Guidance for a comprehensive list of data collection information sources. This information will be utilized in determining additional data needed to characterize the site, better define potential applicable or relevant and appropriate requirements (ARARs), and develop a range of preliminarily identified remedial alternatives. Data Quality Objectives (DQOs) will be established subject to U.S. EPA approval which specify the usefulness of existing data. Decisions on the necessary data and DQOs will be made by U.S. EPA.

Conduct Site Visit

The Respondents will conduct a site visit during the project scoping phase to assist in developing a conceptual understanding of sources and areas of contamination as well as potential exposure pathways and receptors at the site. During the site visit the Respondents must observe the site's physiography, hydrology, geology, and demographics, as well as natural resource, ecological and cultural features. This information will be utilized to better scope the project and to determine the extent of additional data

necessary to characterize the site, better define potential ARARs, and narrow the range of preliminarily identified remedial alternatives.

b. Project Planning (2.2)

Once the Respondents have collected and analyzed existing data and conducted a site visit, the specific project scope will be planned. Project planning activities include those tasks described below as well as identifying data needs, developing a work plan, designing a data collection program, and identifying health and safety protocols. These tasks are described in Section c. of this task since they result in the development of specific required deliverables.

Refine and document preliminary remedial action objectives and alternatives (2.2.3)

Once existing site information has been analyzed and an understanding of the potential site risks has been determined by Respondents, U.S. EPA and Ohio EPA, the Respondents will review and, if necessary, refine the remedial action objectives that have been identified by U.S. EPA for each actually or potentially contaminated medium. The revised remedial action objectives must be documented in a technical memorandum and are subject to U.S. EPA approval. The Respondents must then identify a preliminary range of broadly defined potential remedial action alternatives and associated technologies. The range of potential alternatives must encompass, where appropriate, alternatives in which treatment significantly reduces the toxicity, mobility, or volume of the waste; alternatives that involve containment with little or no treatment; and a no-action alternative.

Document the need for treatability studies (2.2.4)

If remedial actions involving treatment have been identified by the Respondents or U.S. EPA, treatability studies will be required except where the Respondents can demonstrate to U.S. EPA's satisfaction that they are not needed. Where treatability studies are needed, initial treatability testing activities (such as research and study design) will be planned to occur concurrently with site characterization activities (see Tasks 3 and 5).

Begin preliminary identification of Potential ARARs (2.2.5)

The Respondents will conduct a preliminary identification of potential state and federal ARARs (chemical-specific, location-specific and action-specific) to assist in the refinement of remedial action objectives, and the initial

identification of remedial alternatives and ARARs associated with particular actions. ARAR identification will continue as site conditions, contaminants, and remedial action alternatives are better defined.

c. Scoping Deliverables (2.3)

At the conclusion of the project planning phase, the Respondents must submit a RI/FS work plan, a sampling and analysis plan, and a site health and safety plan. The RI/FS work plan and sampling and analysis plan must be reviewed and approved by U.S. EPA prior to the initiation of field activities.

RI/FS Work Plan (2.3.1)

A work plan documenting the decisions and evaluations completed during the scoping process must be submitted to U.S. EPA and Ohio EPA for review and to U.S. EPA for approval. The work plan must be developed in conjunction with the sampling and analysis plan and the site health and safety plan, although each plan may be delivered under separate cover. The work plan must include a comprehensive description of the work to be performed, including the methodologies to be utilized, as well as a corresponding schedule for completion. In addition, the work plan must include the rationale for performing the required activities. Specifically, the work plan must present a statement of the problem(s) and potential problem(s) posed by the site and the objectives of the RI/FS. Furthermore, the plan must include a site background summary setting forth the site description including the geographic location of the site, and to the extent possible, a description of the site's physiography, hydrology, geology, demographics, ecological, cultural and natural resource features; a synopsis of the site history and a description of previous responses that have been conducted at the site by local, state, federal, or private parties; a summary of the existing data in terms of physical and chemical characteristics of the contaminants identified, and their distribution among the environmental media at the site, and a summary of all information regarding natural resources at risk to injury from the release of oil and hazardous substances at or from the Site and any ascertainable damage(s) to natural resources. The plan must recognize Respondent's preparation of the baseline human health and ecological risk assessment. In addition, the plan must include a description of the site management strategy developed by U.S. EPA during scoping; a preliminary identification of remedial alternatives and data needs for evaluation of remedial alternatives. The plan must reflect coordination with treatability study requirements (see Tasks 1 and 4). It must include a process for and manner of

identifying Federal and state ARARs (chemical-specific, location-specific and action-specific).

Finally, the major part of the work plan is a detailed description of the tasks to be performed, information needed for each task and for the baseline human health and ecological risk assessment, information to be produced during and at the conclusion of each task, and a description of the work products that must be submitted to U.S. EPA and Ohio EPA. This includes the deliverables set forth in the remainder of this statement of work; a schedule for each of the required activities which is consistent with the RI/FS guidance; and a project management plan, including a data management plan (e.g., requirements for project management systems and software, minimum data requirements, data format and backup data management), monthly reports to U.S. EPA and Ohio EPA and meetings and presentations to U.S. EPA and Ohio EPA at the conclusion of each major phase of the RI/FS. The Respondents must refer to Appendix B of the RI/FS Guidance for a comprehensive description of the contents of the required work plan. The RI/FS work plan must also require the Respondents to gather sufficient data, samples and other information, in consultation with the Trustees, to enable the completion of an injury determination and other appropriate natural resource damage assessment activities consistent with 15 CFR Part 990 and 43 CFR Part 11. The data, samples and other information gathered to enable the completion of an injury determination and other appropriate natural resource damage assessment activities must be used to coordinate remedial activity and the restoration, rehabilitation or replacement of, or compensation for, injured natural resources. Because of the unknown nature of the site and iterative nature of the RI/FS, additional data requirements and analyses may be identified throughout the process. The Respondents must submit a technical memorandum documenting the need for additional data, and identifying the DQOs whenever such requirements are identified. In any event, the Respondents are responsible for fulfilling additional data and analysis needs identified by U.S. EPA and Ohio EPA consistent with the general scope and objectives of this RI/FS.

#### Sampling and Analysis Plan (2.3.2)

The Respondents must prepare a sampling and analysis plan (SAP) to ensure that sample collection and analytical activities are conducted in accordance with technically acceptable protocols and that the data meet DQOs. The SAP provides a mechanism for planning field activities and consists of a field sampling plan (FSP) and a quality assurance project plan (QAPP).

The FSP must define in detail the sampling and data-gathering methods that must be used on the project. It must include sampling objectives, sample location and frequency, sampling equipment and procedures, and sample handling and analysis. Respondents must include a schedule which identifies the timing for the initiation and completion of all task to be completed as a part of this FSP.

The QAPP must describe the project objectives and organization, functional activities, and quality assurance and quality control (QA/QC) protocols that must be used to achieve the desired DQOs. The DQOs must at a minimum reflect use of analytic methods to identifying contamination and remediating contamination consistent with the levels for remedial action objectives identified in the National Contingency Plan, 59 FR 47384, September 15, 1994. In addition, the QAPP must address sampling procedures, sample custody, analytical procedures, and data reduction, validation, reporting and personnel qualifications. Respondents must also ensure provision of analytical tracking information consistent with the U.S. EPA's Office of Solid Waste and Emergency Response (OSWER) Directive No. 9240.0-2B Extending the Tracking of Analytical Services to PRP-Lead Superfund Sites. Field personnel must be available for U.S. EPA and Ohio EPA QA/QC training and orientation where applicable.

The Respondents must demonstrate, in advance, to U.S. EPA's satisfaction, that each laboratory they may use is qualified to conduct the proposed work. This includes use of methods and analytical protocols for the chemicals of concern in the media of interest within detection and quantification limits consistent with both QA/QC procedures and DQOs approved in the QAPP for the site by U.S. EPA. The laboratory must have and follow an approved QA program. If a laboratory not in the Contract Laboratory Program (CLP) is selected, methods consistent with CLP methods that would be used at this site for the purposes proposed and QA/QC procedures approved by U.S. EPA must be used. If the laboratory is not in the CLP program, a laboratory QA program must be submitted for U.S. EPA and Ohio EPA review and U.S. EPA approval. U.S. EPA may require that the Respondents submit detailed information to demonstrate that the laboratory is qualified to conduct the work, including information on personnel qualifications, equipment and material specifications. The Respondents must provide assurances that U.S. EPA and Ohio EPA have access to laboratory personnel, equipment and records for sample collection, transportation and analysis. Upon request by U.S. EPA, Respondents must allow the U.S. EPA or its authorized representatives to take split and/or duplicate samples of any samples collected by Respondents or their contractors or agents.



### Site Health and Safety Plan (2.3.3)

A health and safety plan must be prepared in conformance with the Respondent's health and safety program, and in compliance with the Occupational Safety and Health Administration (OSHA) regulations and protocols outlined in Title 29 of the Code of Federal Regulations (C.F.R.), Part 1910. The health and safety plan must include the 11 elements described in the RI/FS Guidance, such as a health and safety risk analysis, a description of monitoring and personal protective equipment, medical monitoring, and site control. It should be noted that U.S. EPA does not "approve" the Respondent's health and safety plan, but rather U.S. EPA and Ohio EPA review it to ensure that all necessary elements are included, and that the plan provides for the protection of human health and the environment. The safety plan must, at a minimum, follow the U.S. EPA's guidance document Standard Operating Safety Guides, Publication 9285.1-03, PB92-963414, June 1992.

### TASK 2 - COMMUNITY RELATIONS

The development and implementation of community relations activities are the responsibility of U.S. EPA. The critical community relations planning steps performed by U.S. EPA and Ohio EPA include conducting community interviews and developing a community relations plan. Although implementation of the community relations plan is the responsibility of U.S. EPA, the Respondents and the Trustees may assist by providing information regarding the site's history, participating in public meetings, by assisting in preparing fact sheets for distribution to the general public, or conducting other activities approved by U.S. EPA. Respondents and/or U.S. EPA will prepare two or more baseline human health and ecological risk assessment memoranda which will summarize the toxicity assessment and exposure assessment components of the baseline human health and ecological risk assessment. U.S. EPA will make these memoranda available to all interested parties for comment and place them in the Administrative Record. (U.S. EPA is not required, however, to formally respond to significant comments except during the formal public comment period on the proposed plan after the RI/FS.) The extent of PRP involvement in community relations activities is left to the discretion of U.S. EPA. The Respondents' community relations responsibilities, if any, shall be specified in the community relations plan. All PRP-conducted community relations activities will be subject to oversight by U.S. EPA.

### TASK 3 - SITE CHARACTERIZATION (RI/FS Guidance, Chapter 3)

As part of the RI, the Respondents will perform the activities described in this task, including the preparation of a

site characterization summary and a RI/FS report. The RI conducted by Respondents will include an investigation which focuses on the segment of the East Branch of the Black River adjacent to Chemical Recovery Systems, Inc. The overall objective of site characterization is to describe areas of a site that may pose a threat to human health or the environment. This is accomplished by first determining a site's physiography, geology, and hydrology. Surface and subsurface pathways of migration must be defined. The Respondents must identify the sources of contamination and define the nature, extent, and volume of the sources of contamination, including their physical and chemical constituents as well as their concentrations at incremental locations to background in the affected media. The Respondents must also investigate the extent of migration of this contamination as well as its volume and any changes in its physical or chemical characteristics, to provide for a comprehensive understanding of the nature and extent of contamination at the site. Using this information, contaminant fate and transport is then determined and projected.

During this phase of the RI/FS, the work plan, SAP, and health and safety plan are implemented. Field data are collected and analyzed to provide the information required to accomplish the objectives of the study. The Respondents must notify U.S. EPA and Ohio EPA at least two weeks in advance of the field work regarding the planned dates for any field activities including, but not limited to, ecological field surveys, field lay out of the sampling grid, excavation, installation of wells, initiating sampling, installation and calibration of equipment, pump tests, and initiation of analysis and other field investigation activities. The Respondents must demonstrate that the laboratory and type of laboratory analyses that will be utilized during site characterization meets the specific QA/QC requirements and the DQOs of the site investigation as specified in the SAP. In view of the unknown site conditions, activities are often iterative, and to satisfy the objectives of the RI/FS it may be necessary for the Respondents to supplement the work specified in the initial work plan. In addition to the deliverables below, the Respondents must provide a monthly progress report and participate in meetings at major points in the RI/FS.

a. Field Investigation (3.2)

The field investigation includes the gathering of data to define site physical and biological characteristics, sources of contamination, and the nature and extent of contamination at the site. These activities must be performed by the Respondents in accordance with the work plan and SAP. At a minimum, this shall address the following:

Implement and document field support activities (3.2.1)

The Respondents must initiate field support activities following approval of the work plan and SAP. Field support activities may include obtaining access to the site, scheduling, and procuring equipment, office space, laboratory services, and/or contractors. The Respondents must notify U.S. EPA and Ohio EPA at least two weeks prior to initiating field support activities so that U.S. EPA and Ohio EPA may adequately schedule oversight tasks. The Respondents must also notify U.S. EPA and Ohio EPA in writing upon completion of field support activities.

Investigate and define site physical and biological characteristics (3.2.2)

The Respondents must collect data on the physical and biological characteristics of the site and its surrounding areas including the physiography, geology, and hydrology, and specific physical characteristics identified in the work plan. This information must be ascertained through a combination of physical measurements, observations, and sampling efforts and must be utilized to define potential transport pathways and human and ecological receptor populations. In defining the site's physical characteristics the Respondents must also obtain sufficient engineering data including, but not limited to pumping characteristics for the projection of contaminant fate and transport, and development and screening of remedial action alternatives, including information to assess treatment technologies.

Define sources of contamination (3.2.3)

The Respondents must locate each source of contamination. For each location, the areal extent and depth of contamination must be determined by sampling at incremental depths on a sampling grid, as required by U.S. EPA. The physical characteristics and chemical constituents and their concentrations must be determined for all known and discovered sources of contamination. The Respondents shall conduct sufficient sampling to define the boundaries of the contaminant sources to the level established in the QA/QC plan and DQOs.

Defining the source of contamination must include analyzing the potential for contaminant release (e.g., long term leaching from soil), contaminant mobility and persistence, and characteristics important for evaluating remedial actions, including information to assess treatment technologies.

Describe the nature and extent of contamination (3.2.4)

The Respondents must gather information to describe the nature and extent of contamination and injury to natural resources as a final step during the field investigation. To describe the nature and extent of contamination and injury to natural resources, the Respondents must utilize the information on site physical and biological characteristics and sources of contamination to give a preliminary estimate of the contaminants that may have migrated. The Respondents must then implement an iterative monitoring program and any study program identified in the work plan or SAP such that by using analytical techniques sufficient to detect and quantify the concentration of contaminants, the migration of contaminants through the various media at the site can be determined. In addition, the Respondents must gather data for calculations of contaminant fate and transport. This process is continued until the area and depth of contamination are known to the level of contamination established in the QA/QC plan and DQOs. Respondents, U.S. EPA and Ohio EPA will use the information on the nature and extent of contamination to determine the level of risk presented by the site. Respondents must use this information to help to determine aspects of the appropriate remedial action alternatives to be evaluated.

b. Data Analyses (3.4)

Evaluate site characteristics (3.4.1)

The Respondents must analyze and evaluate the data to describe: (1) site physical and biological characteristics, (2) contaminant source characteristics, (3) nature and extent of contamination and (4) contaminant fate and transport. Results of the site physical characteristics, source characteristics, and extent of contamination analyses are utilized in the analysis of contaminant fate and transport. The evaluation must include the actual and potential magnitude of releases from the sources, and horizontal and vertical spread of contamination as well as mobility and persistence of contaminants. Where modeling is appropriate, such models shall be identified to U.S. EPA and Ohio EPA in a technical memorandum prior to their use. All data and programming, including any proprietary programs, shall be made available to U.S. EPA and Ohio EPA together with a sensitivity analysis. The RI data shall be presented in a format (i.e., computer disc or equivalent) to facilitate U.S. EPA's and Ohio EPA's evaluation of the baseline human health and ecological risk assessment. The Respondents shall agree to discuss any data gaps identified by the U.S. EPA and then collect any data that is needed to complete the baseline human health and ecological risk

assessment. (See "Guidance for Data Useability in Risk Assessment - OSWER Directive # 9285.7-05 - October 1990.) Also, this evaluation shall provide any information relevant to site characteristics necessary for evaluation of the need for remedial action in the baseline human health and ecological risk assessment and for the development and evaluation of remedial alternatives. Analyses of data collected for site characterization must meet the DQOs developed in the QA/QC plan stated in the SAP (or revised during the RI).

c. Data Management Procedures (3.5)

The Respondents must consistently document the quality and validity of field and laboratory data compiled during the RI.

Document field activities (3.5.1)

Information gathered during site characterization must be consistently documented and adequately recorded by the Respondents in well maintained field logs and laboratory reports. The method(s) of documentation must be specified in the work plan and/or the SAP. Field logs must be utilized to document observations, measurements, and significant events that have occurred during field activities. Laboratory reports must document sample custody, analytical responsibility, analytical results, adherence to prescribed protocols, nonconformity events, corrective measures, and/or data deficiencies.

Maintain sample management and tracking (3.5.2; 3.5.3)

The Respondents must maintain field reports, sample shipment records, analytical results, and QA/QC reports to ensure that only validated analytical data are reported and utilized in the development and evaluation of remedial alternatives. Analytical results developed under the work plan will not be included in any site characterization reports unless accompanied by or cross-referenced to a corresponding QA/QC report. In addition, the Respondents must establish a data security system to safeguard chain-of-custody forms and other project records to prevent loss, damage, or alteration of project documentation.

d. Site Characterization Deliverables (3.7)

The Respondents must prepare the preliminary site characterization summary. The remedial investigation (RI) report must be prepared concurrently with the feasibility study (FS) report and submitted as a combined RI/FS report.

### Preliminary Site Characterization Summary (3.7.2)

After completing field sampling and analysis, the Respondents must prepare a concise site characterization summary. This summary must review the investigative activities that have taken place, and describe and display site data documenting the location and characteristics of surface and subsurface features and contamination at the site including the affected medium, location, types, physical state, concentration of contaminants and quantity. In addition, the location, dimensions, physical condition and varying concentrations of each contaminant throughout each source and the extent of contaminant migration through each of the affected media and natural resources must be documented. The site characterization summary must provide U.S. EPA and Ohio EPA with a preliminary reference for evaluating the human health and ecological risk assessment, and evaluating the development and screening of remedial alternatives and the refinement and identification of ARARs.

### TASK 4 - TREATABILITY STUDIES (RI/FS Manual, Chapter 5)

If determined to be necessary by U.S. EPA or the Respondents, treatability testing must be performed by the Respondents to assist in the detailed analysis of alternatives. In addition, if applicable, testing results and operating conditions must be used in the detailed design of the selected remedial technology. The following activities must be performed by the Respondent.

#### a. Determination of Candidate Technologies and of the Need for Testing (5.2; 5.4)

The Respondents must identify in a technical memorandum, subject to U.S. EPA and Ohio EPA review and U.S. EPA approval, candidate technologies for a treatability studies program as early as project planning (Task 1). The listing of candidate technologies must cover the range of technologies required for alternatives analysis (Task 6 a.) The specific data requirements for the testing program must be determined and refined during site characterization and the development and screening of remedial alternatives (Tasks 2 and 6, respectively).

#### Conduct literature survey and determine the need for treatability testing (5.2)

The Respondents must conduct a literature survey to gather information on performance, relative costs, applicability, removal efficiencies, operation and maintenance (O&M) requirements, and implementability of candidate

technologies. If practical candidate technologies have not been sufficiently demonstrated, or cannot be adequately evaluated for this site on the basis of available information, treatability testing must be conducted. Where it is determined by U.S. EPA that treatability testing is required, and unless the Respondents can demonstrate to U.S. EPA's satisfaction that they are not needed, the Respondents must submit a statement of work to U.S. EPA and Ohio EPA outlining the steps and data necessary to evaluate and initiate the treatability testing program.

#### Evaluate treatability studies (5.4)

Once a decision has been made to perform treatability studies, U.S. EPA will decide on the type of treatability testing to use (e.g., bench versus pilot). Because of the time required to design, fabricate, and install pilot scale equipment as well as perform testing for various operating conditions, the decision to perform pilot testing must be made as early in the process as possible to minimize potential delays of the FS. To assure that a treatability testing program is completed on time, and with accurate results, the Respondents must either submit a separate treatability testing work plan or an amendment to the original site work plan for U.S. EPA and Ohio EPA review and U.S. EPA approval.

#### b. Treatability Testing and Deliverables (5.5; 5.6; 5.8)

The deliverables that are required, in addition to the memorandum identifying candidate technologies, where treatability testing is conducted include a work plan, a sampling and analysis plan, and a final treatability evaluation report. U.S. EPA may also require a treatability study health and safety plan, where appropriate.

#### Treatability testing work plan (5.5)

The Respondents must prepare a treatability testing work plan or amendment to the original site work plan for U.S. EPA and Ohio EPA review and U.S. EPA approval describing the site background, remedial technology(ies) to be tested, test objectives, experimental procedures, treatability conditions to be tested, measurements of performance, analytical methods, data management and analysis, health and safety, and residual waste management. The DQOs for treatability testing must be documented as well. If pilot scale treatability testing is to be performed, the pilot-scale work plan must describe pilot plant installation and start-up, pilot plant operation and maintenance procedures,

operating conditions to be tested, a sampling plan to determine pilot plant performance, and a detailed health and safety plan. If testing is to be performed off-site, permitting requirements must be addressed.

#### Treatability study SAP (5.5)

If the original QAPP or FSP is not adequate for defining the activities to be performed during the treatability tests, a separate treatability study SAP or amendment to the original site SAP must be prepared by the Respondents for U.S. EPA and Ohio EPA review and U.S. EPA approval. Task 1, Item c. of this statement of work provides additional information on the requirements of the SAP.

#### Treatability study health and safety plan (5.5)

If the original health and safety plan is not adequate for defining the activities to be performed during the treatment tests, a separate or amended health and safety plan must be developed by the Respondent. Task 1, Item c. of this statement of work provides additional information on the requirements of the health and safety plan. U.S. EPA and Ohio EPA do not "approve" the treatability study health and safety plan.

#### Treatability study evaluation report (5.6)

Following completion of treatability testing, the Respondents must analyze and interpret the testing results in a technical report to U.S. EPA and Ohio EPA. Depending on the sequence of activities, this report may be a part of the RI/FS report or a separate deliverable. The report must evaluate each technology's effectiveness, implementability, cost and actual results as compared with predicted results. The report must also evaluate full scale application of the technology, including a sensitivity analysis identifying the key parameters affecting full-scale operation.

### **TASK 5 - DEVELOPMENT AND SCREENING OF Remedial Alternatives (RI/FS Manual, Chapter 4)**

The development and screening of remedial alternatives is performed to develop an appropriate range of waste management options that must be evaluated. This range of alternatives must include as appropriate, options in which treatment is used to reduce the toxicity, mobility, or volume of wastes, but varying in the types of treatment, the amount treated, and the manner in which long-term residuals or untreated wastes are managed; options involving containment with little or no treatment; options involving both treatment and containment; and a no-action alternative. The following activities must be performed by the



Respondents as a function of the development and screening of remedial alternatives.

a. Development and Screening of Remedial Alternatives (4.2)

The Respondents must begin to develop and evaluate a range of appropriate waste management options that at a minimum ensure protection of human health and the environment, concurrent with the RI site characterization task which must include the consideration of restoration, rehabilitation or replacement of, or compensation for, injured natural resources.

Refine and document remedial action objectives (4.2.1)

Based on the baseline human health and ecological risk assessment, the Respondents must review and if necessary modify the site-specific remedial action objectives, specifically the PRGs, that were established by U.S. EPA prior to or during negotiations between U.S. EPA, Ohio EPA and the Respondent. The revised PRGs must be documented in a technical memorandum that will be reviewed by U.S. EPA and Ohio EPA and approved by U.S. EPA. These modified PRGs must specify the contaminants and media of interest, exposure pathways and receptors, and an acceptable contaminant level or range of levels (at particular locations for each exposure route).

Develop general response actions (4.2.2)

The Respondents must develop general response actions for each medium of interest defining containment, treatment, excavation, pumping, or other actions, singly or in combination, to satisfy the remedial action objectives.

Identify areas or volumes of media (4.2.3)

The Respondents must identify areas or volumes of media to which general response actions may apply, taking into account requirements for protectiveness as identified in the remedial action objectives. The chemical and physical characterization of the site must also be taken into account.

Identify, screen, and document remedial technologies (4.2.4; 4.2.5)

The Respondents must identify and evaluate technologies applicable to each general response action to eliminate those that cannot be implemented at the site. General response actions must be refined to specify remedial technology types. Technology process options for each of the technology types must be identified either concurrent

with the identification of technology types, or following the screening of the considered technology types. Process options must be evaluated on the basis of effectiveness, implementability, and cost factors to select and retain one or, if necessary, more representative processes for each technology type. The technology types and process options must be summarized for inclusion in a technical memorandum. The reasons for eliminating alternatives must be specified.

#### Assemble and document alternatives (4.2.6)

The Respondents must assemble selected representative technologies into alternatives for each affected medium or operable unit. Together, all of the alternatives must represent a range of treatment and containment combinations that must address either the site or the operable unit as a whole. A summary of the assembled alternatives and their related action-specific ARARs must be prepared by the Respondents for inclusion in a technical memorandum. The reasons for eliminating alternatives during the preliminary screening process must be specified.

#### Refine alternatives

The Respondents must refine the remedial alternatives to identify contaminant volume addressed by the proposed process and sizing of critical unit operations as necessary. Sufficient information must be collected for an adequate comparison of alternatives. PRGs for each chemical in each medium must also be modified as necessary to incorporate any new human health and ecological risk assessment information presented in Respondent's baseline human health and ecological risk assessment report. Additionally, action-specific ARARs must be updated as the remedial alternatives are refined.

#### Conduct and document screening evaluation of each alternative (4.3)

The Respondents may perform a final screening process based on short and long term aspects of effectiveness, implementability, and relative cost. Generally, this screening process is only necessary when there are many feasible alternatives available for detailed analysis. If necessary, the screening of alternatives must be conducted to assure that only the alternatives with the most favorable composite evaluation of all factors are retained for further analysis. As appropriate, the screening must preserve the range of treatment and containment alternatives that was initially developed. The range of remaining alternatives must include options that use treatment technologies and permanent solutions to the maximum extent practicable. The

Respondents must prepare a technical memorandum summarizing the results and reasoning employed in screening, arraying alternatives that remain after screening, and identifying the action-specific ARARs for the alternatives that remain after screening.

b. Alternatives Development and Screening Deliverables (4.5)

The Respondents must prepare a technical memorandum summarizing the work performed in and the results of each task above, including an alternatives array summary. These must be modified by the Respondents if required by U.S. EPA's comments to assure identification of a complete and appropriate range of viable alternatives to be considered in the detailed analysis. This deliverable must document the methods, rationale, and results of the alternatives screening process.

TASK 6 - DETAILED ANALYSIS OF REMEDIAL ALTERNATIVES (RI/FS Guidance, Chapter 6)

The detailed analysis must be conducted by the Respondents to provide U.S. EPA and Ohio EPA with the information needed to allow for U.S. EPA's selection of a site remedy. This analysis is the final task to be performed by the Respondents during the FS.

a. Detailed Analysis of Alternatives (6.2)

The Respondents must conduct a detailed analysis of alternatives which must consist of an analysis of each option against a set of nine evaluation criteria and a comparative analysis of all options using the same evaluation criteria as a basis for comparison.

Apply nine criteria and document analysis (6.2.1 - 6.2.4)

The Respondents must apply nine evaluation criteria to the assembled remedial alternatives to ensure that the selected remedial alternative must be protective of human health and the environment; must be in compliance with, or include a waiver of, ARARs; must be cost-effective; must utilize permanent solutions and alternative treatment technologies, or resource recovery technologies, to the maximum extent practicable; and must address the statutory preference for treatment as a principal element. The evaluation criteria include: (1) overall protection of human health and the environment; (2) compliance with ARARs; (3) long-term effectiveness and permanence; (4) reduction of toxicity, mobility, or volume; (5) short-term effectiveness; (6) implementability; (7) cost; (8) state (or support agency) acceptance; and (9) community acceptance. (Note: criteria 8 and 9 are considered after the RI/FS report has been

released to the general public.) For each alternative the Respondents must provide: (1) a description of the alternative that outlines the waste management strategy involved and identifies the key ARARs associated with each alternative, and (2) a discussion of the individual criterion assessment. If the Respondents do not have direct input on criteria (8) state (or support agency) acceptance and (9) community acceptance, these must be addressed by U.S. EPA.

Compare alternatives against each other and document the comparison of alternatives (6.2.5; 6.2.6)

The Respondents must perform a comparative analysis between the remedial alternatives. That is, each alternative must be compared against the others using the evaluation criteria as a basis of comparison. Identification and selection of the preferred alternative are reserved for U.S. EPA. The Respondents must prepare a technical memorandum summarizing the results of the comparative analysis.

b. Detailed Analysis Deliverables (6.5)

In addition to the technical memorandum summarizing the results of the comparative analysis, the Respondents must submit a draft RI/FS report to U.S. EPA and Ohio EPA for review and U.S. EPA approval. The Respondents' analysis must include an analysis of each option for the restoration, rehabilitation or replacement of, or compensation for, injured natural resources.

Remedial Investigation and Feasibility study report (3.7.3 and 6.5)

The Respondents must prepare a draft RI/FS report for U.S. EPA and Ohio EPA review and U.S. EPA approval. This report shall summarize results of field activities to characterize the site, sources of contamination, nature and extent of contamination, the fate and transport of contaminants, nature and extent of injury to natural resources, the analysis of remedial alternatives. This report must include the methodology and results of the baseline human health and ecological risk assessment if deemed appropriate by U.S. EPA. The Respondents must refer to the RI/FS Guidance for an outline of the report format and contents. Following comment by U.S. EPA, the Respondents must prepare a final RI/FS report which satisfactorily addresses U.S. EPA's comments.

This report, as ultimately adopted or amended by U.S. EPA, provides a basis for remedy selection by U.S. EPA and documents the development and analysis of remedial alternatives. The Respondents must refer to the RI/FS Guidance for an outline of the report format and the required report content.

## REFERENCES FOR CITATION

The following list, although not comprehensive, comprises many of the regulations and guidance documents that apply to the RI/FS process:

The (revised) National Contingency Plan

"Guidance for Conducting Remedial Investigations and Feasibility Studies Under CERCLA," U.S. EPA, Office of Emergency and Remedial Response, October 1988, OSWER Directive No. 9355.3-01.

"Guidance on Conducting Non-Time Critical Removal Actions Under CERCLA" (Publication 9360.0-32, August 1993)

"Interim Guidance on Potentially Responsible Party Participation in Remedial Investigation and Feasibility Studies," U.S. EPA, Office of Waste Programs Enforcement, Appendix A to OSWER Directive No. 9355.3-01.

"Guidance on Oversight of Potentially Responsible Party Remedial Investigations and Feasibility Studies," U.S. EPA, Office of Waste Programs Enforcement, OSWER Directive No. 9835.3

"A Compendium of Superfund Field Operations Methods," Two Volumes, U.S. EPA, Office of Emergency and Remedial Response, EPA/540/P-87/001a, August 1987, OSWER Directive No. 9355.0-14.

"EPA NEIC Policies and Procedures Manual," May 1978, revised November 1984, EPA-330/9-78-001-R.

"Data Quality Objectives for Remedial Response Activities," U.S. EPA, Office of Emergency and Remedial Response and Office of Waste Programs Enforcement, EPA/540/G-87/003, March 1987, OSWER Directive No. 9335.0-7B.

"Guidelines and Specifications for Preparing Quality Assurance Project Plans," U.S. EPA, Office of Research and Development, Cincinnati, OH, QAMS-004/80, December 29, 1980.

"Interim Guidelines and Specifications for Preparing Quality Assurance Project Plans," U.S. EPA, Office of Emergency and Remedial Response, QAMS-005/80, December 1980.

"Users Guide to the EPA Contract Laboratory Program," U.S. EPA, Sample Management Office, August 1982.

"Interim Guidance on Compliance with Applicable or Relevant and Appropriate Requirements," U.S. EPA, Office of Emergency and Remedial Response, July 9, 1987, OSWER Directive No. 9234.0-05.

"CERCLA Compliance with Other Laws Manual," Two Volumes, U.S.

EPA, Office of Emergency and Remedial Response, August 1988 (draft), OSWER Directive No. 9234.1-01 and -02.

"Guidance on Remedial Actions for Contaminated Ground Water at Superfund Sites," U.S. EPA, Office of Emergency and Remedial Response, (draft), OSWER Directive No. 9283.1-2.

"Draft Guidance on Preparing Superfund Decision Documents," U.S. EPA, Office of Emergency and Remedial Response, March 1988, OSWER Directive No. 9355.3-02

"Risk Assessment Guidance for Superfund - Volume I Human Health Evaluation Manual (Part A)," December 1989, EPA/540/1-89/002

"Risk Assessment Guidance for Superfund - Volume II Environmental Evaluation Manual," March 1989, EPA/540/1-89/001  
"Guidance for Data Useability in Risk Assessment," October, 1990, EPA/540/G-90/008

"Performance of Risk Assessments in Remedial Investigation /Feasibility Studies (RI/FSS) Conducted by Potentially Responsible Parties (PRPs)," August 28, 1990, OSWER Directive No. 9835.15.

"Role of the Baseline Risk Assessment in Superfund Remedy Selection Decisions," April 22, 1991, OSWER Directive No. 9355.0-30.

"Health and Safety Requirements of Employees Employed in Field Activities," U.S. EPA, Office of Emergency and Remedial Response, July 12, 1981, EPA Order No. 1440.2.

OSHA Regulations in 29 CFR 1910.120 (Federal Register 45654, December 19, 1986).

"Interim Guidance on Administrative Records for Selection of CERCLA Response Actions," U.S. EPA, Office of Waste Programs Enforcement, March 1, 1989, OSWER Directive No. 9833.3A.

"Community Relations in Superfund: A Handbook," U.S. EPA, Office of Emergency and Remedial Response, June 1988, OSWER Directive No. 9230.0#3B.

"Community Relations During Enforcement Activities And Development of the Administrative Record," U.S. EPA, Office of Programs Enforcement, November 1988, OSWER Directive No. 9836.0-1A.

"U.S. EPA Ecological Risk Assessment Guidance for Superfund: Process for Designing and Conducting Ecological Risk Assessments." EPA540-R-97-006. Office of Ecological and Remedial Response, Washington, D.C. 1997.

#### FOR MORE INFORMATION

For additional information contact:

Thomas C. Nash  
Associate Regional Council  
Office of Regional Council (C-14J)  
U.S. EPA Region 5  
77 West Jackson Blvd.  
Chicago, IL 60604-3590

Phone: (312) 886-0552  
Fax: (312) 886-7160  
Email: nash.thomas@epa.gov

Gwendolyn Massenburg (SR-6J)  
Remedial Project Manager  
U.S. EPA Region 5  
77 West Jackson Blvd.  
Chicago, IL 60604-3590

Phone: (312) 886-0983  
Fax: (312) 886-4071  
Email: massenburg.gwendolyn@epa.gov

#### INFORMATION REPOSITORY

U.S. EPA has established a file for public review called an information repository. The information repository contains documents related to the CRS site and the Superfund Program. The repository for Chemical Recovery Systems, Inc is located at:

Elyria Public Library  
320 Washington Avenue  
Elyria, Ohio 44035 (440) 325-5747



Official Business  
Penalty for Private Use - \$300

U.S. Environmental Protection Agency  
Region 5

77 West Jackson Boulevard  
Chicago, IL 60604-3590



#### This fact sheet provides:

- A brief history of the site;
- A summary of the Site Team Evaluation Prioritization (STEP) Report;
- Information on future planned activities for the site;
- A list of contacts and sources for additional information

United States  
Environmental Protection  
Agency

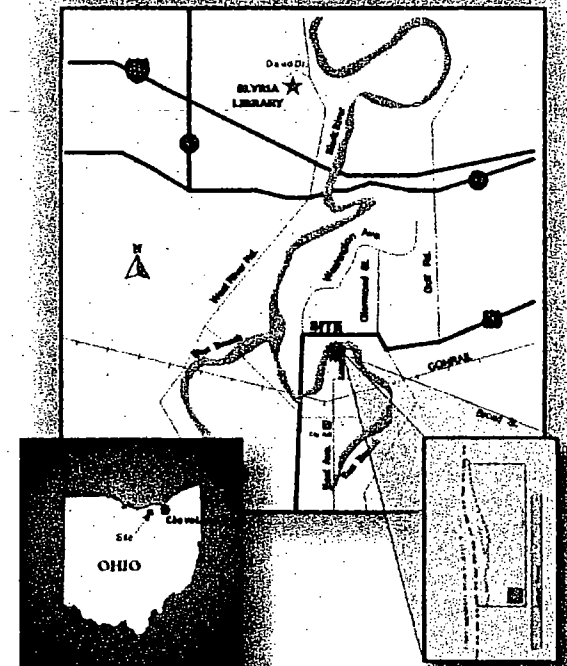
Region 5  
77 West Jackson Boulevard  
Chicago, Illinois 60604-3590

Illinois, Indiana  
Michigan, Minnesota  
Ohio, Wisconsin

## CHEMICAL RECOVERY SYSTEMS, INC. SUPERFUND SITE

Elyria, Lorain County, Ohio

JUNE 2001



The United States Environmental Protection Agency (U.S.EPA) and the Ohio Environmental Protection Agency (Ohio EPA) has conducted investigations to determine if operations at the former Chemical Recovery Systems site released contaminants into the environment.

This fact sheet summarizes key information documented in the 1997 Site Team Evaluation Prioritization (STEP) Report prepared by the Ohio EPA Division of Emergency and Remedial Response (DERR). The STEP Report and other documents pertaining to Chemical Recovery Systems (CRS), Inc. may be found in the information repository for public review (see the section entitled "Information Repository").

## ■ INTRODUCTION

The CRS site is located at 142 Locust Street in Lorain County, Elyria, Ohio (See Figure 1). The CRS site is located in a predominately industrial and commercial area near the central business district of Elyria. The site occupies 4 acres and is bordered to the west by the East Branch of Black River. Operating from 1974 until 1981, CRS received used organic solvents from various industries, distilled the "dirty" solvents on site, and sold the reclaimed solvents back to industries. Solvents were transported to and from the site in 55-gallon drums or by tanker truck. This fact sheet summarizes the findings concerning the site conditions and migration pathways.

## ■ CRS SITE HISTORY

The site is currently leased for storage of scrap aluminum and junked cars. CRS's former warehouse/office and a Rodney Hunt Still building presently occupy the southeastern corner of the site. The foundation of the former Brighten Still building is located in the northwest corner. Used solvents were transferred from tanker trucks into aboveground storage tanks (AST). Nine ASTs with a total capacity of 53,500 gallons are known to have been situated on the site, CEHD 1979c). Fifty five-gallon drums numbering from 4,000 to 9,000 were stored in four different locations with three of the locations situated in the northern portion of the site and one location in the southwestern corner of the site (EPA 1983a). CRS processed approximately 250,000 gallons of used chemicals per month. The distillation units generated an average of 10,000 gallons of waste sludge per week (EPA 1980). The majority of the waste was disposed of off site in Grafton, Ohio and Michigan (USDC 1980; E&E 1982).

## ■ CONSENT DECREE

Legal action under the Resource Recovery and Conservation Act (RCRA) was initiated by USEPA in October 1980. On-site inspections revealed that the site posed imminent danger to the local population and environment. A Consent Decree was issued in July 1983, by US District Court, Northern District of Ohio requiring CRS to cease operations and cleanup the site. CRS was ordered to do several remedial actions: excavating all visibly contaminated soil; perimeter excavating the still buildings, disposing all removed soil to an EPA approved site for wastes; backfilling excavated areas with clean fill and grading the site towards the East Branch of the Black River. In November 1983, USEPA

after, an on-site inspection concluded that CRS was in compliance with the Consent Decree. The site was secured with perimeter fencing.

## ■ REMEDIAL INVESTIGATIONS

The Site Team Evaluation Prioritization (STEP) completed their investigation in 1997, which determined the type and extent of contamination at the CRS site. Soil, groundwater, surface water, and sediment samples were collected. Samples were analyzed for volatile organic compounds (VOCs), semi-volatile organic compounds (SVOCs), pesticides, polychlorinated biphenyls (PCBs), metals listed on Target Analyte List (TAL), and Target Compound List (TCL), and cyanide.

The primary source of soil contamination was improper drum storage practices. High concentrations of VOCs, SVOCs, TAL metals, and low concentrations of pesticides/PCBs were detected and potentially migrating to groundwater. Impact on private drinking water supplies is low due to East Branch of Black River acting as a hydraulic barrier. Based upon analytical results, a high potential exists for ground water contamination.

Low levels of VOCs were detected in surface water and sediment downstream of the Site. However, upstream water and sediment sampling revealed higher levels of contaminants. No known surface water intakes (including drinking water) occur along the East Branch of the Black River from the site downstream for 15 miles.

## ■ SUMMARY

Investigations conducted by both USEPA in 1995, and Ohio EPA in 1997 documents, releases of hazardous substances to site soils, ground water, surface water, and sediments at the site. The results from the most recent 1997 Site Team Evaluation Report (STEP) by Ohio EPA for USEPA were consistent with, and in several cases higher than historical results for those environmental media.

Future planned activities include the following: Ongoing potential responsible search; and conducting a remedial investigation/feasibility study, based on the findings of these investigations, the Agency will evaluate several remedies to remediate the site.

## ■ REFERENCES

1. CEND. 1979c. Memorandum regarding State Fire Marshal's Orders at the CRS site. From Ernest Bertha, Chemist. To file April 3.
2. EPA. 1983a. Memorandum regarding CRS Trip Report. Visit conducted on September 1, 1983. From Gregg A. Kuhn to File. September 12.
3. U.S. District Court, Northern District of Ohio (USDC). 1980. Civil Action for United States of America versus CRS.
4. Ecology and Environment, Inc. (E&E). 1982. Hydrogeological and Extent of Contamination Study for the CRS site. Study conducted during August and September 1981.



## Supplemental Information for Small Businesses

### Subject to an U.S. EPA Enforcement Action

The United States Environmental Protection Agency (EPA) offers small businesses a wide variety of compliance assistance resources and tools designed to assist businesses to comply with federal and state environmental laws. These resources can help businesses understand their obligations, improve compliance and find cost-effective ways to comply through the use of pollution prevention and other innovative technologies.

#### Websites

EPA offers a great deal of compliance assistance information and materials for small businesses on the following Websites, available through public libraries:

|  |   |
|--|---|
| ⇒ <a href="http://www.epa.gov">www.epa.gov</a>   | <i>EPA's Home Page</i>                          |
| ⇒ <a href="http://www.smallbiz-enviroweb.org">www.smallbiz-enviroweb.org</a>                       | <i>EPA's Small Business Home Page</i>           |
| ⇒ <a href="http://www.smallbiz-enviroweb.org/state.html">www.smallbiz-enviroweb.org/state.html</a> | <i>List of State Contacts</i>                   |
| ⇒ <a href="http://www.epa.gov/ttn/sbap">www.epa.gov/ttn/sbap</a>                                   | <i>Small Business Assistance Programs</i>       |
| ⇒ <a href="http://www.epa.gov/oeca/polguid/index.html">www.epa.gov/oeca/polguid/index.html</a>     | <i>Enforcement Policy and Guidance</i>          |
| ⇒ <a href="http://www.epa.gov/oeca/smbusi.html">www.epa.gov/oeca/smbusi.html</a>                   | <i>Small Business Policy</i>                    |
| ⇒ <a href="http://www.epa.gov/oeca/oc">www.epa.gov/oeca/oc</a>                                     | <i>Compliance Assistance Home Page</i>          |
| ⇒ <a href="http://www.epa.gov/oeca/ccsmd/commpull.html">www.epa.gov/oeca/ccsmd/commpull.html</a>   | <i>Small Businesses and Commercial Services</i> |
| ⇒ <a href="http://www.epa.gov/oeca/ccsmd/mun.html">www.epa.gov/oeca/ccsmd/mun.html</a>             | <i>Small Communities Policy</i>                 |

#### Hotlines

EPA sponsors approximately 89 hotlines and clearinghouses that provide a free and convenient avenues to obtain assistance with environmental requirements. The Small Business Ombudsman Hotline can provide you with a list of all the hot lines and assist you with determining which hotline will best meet your needs. Key hotlines that may be of interest to you include:

|   |                |
|---|----------------|
| ⇒ Small Business Ombudsman.....                   | (800) 368-5888 |
| ⇒ RCRA/UST/CERCLA Hotline.....                    | (800) 424-9346 |
| ⇒ Toxics Substances and Asbestos Information..... | (202) 554-1404 |
| ⇒ Safe Drinking Water.....                        | (800) 426-4791 |
| ⇒ Stratospheric Ozone/CFC Information.....        | (800) 296-1996 |
| ⇒ Clean Air Technical Center.....                 | (919) 541-0800 |
| ⇒ Wetlands Hotline.....                           | (800) 832-7828 |

#### Compliance Assistance Centers

EPA has established national compliance assistance centers, in partnership with industry, academic institutions, and other federal and state agencies, that provide on line and fax back assistance services in the following sectors heavily populated with small businesses:

- ⇒ Metal Finishing ([www.nmfrc.org](http://www.nmfrc.org))
- ⇒ Printing (1-888-USPNEAC or [www.pneac.org](http://www.pneac.org))
- ⇒ Automotive (1-888-GRN-LINK or [www.ccar-greenlink.org](http://www.ccar-greenlink.org))

**CHEMICAL RECOVERY SYSTEMS  
UPDATED PRP ADDRESS LIST  
LAST UPDATED 2/14/02**

- |  |   |
|--|---|
| 1. 3 M Corp.<br>Attn.: Brian Davis<br>P.O. Box 33428<br>St. Paul, MN 55133-3428  | 9. Foley and Lardner<br>Attn: Tanya O'Neill<br>777 E Wisconsin Ave.<br>Milwaukee, WI 53202-5367<br>(re: Allis Chalmers)     |
| 2. Smith and Condemi Co., LPA<br>Attn: Bruce Illes<br>1801 East 9 <sup>th</sup> Street, Suite 900<br>Cleveland, OH 44114<br>(re: Adams Automatic Inc.) | 10. US Steel Corporation<br>Attn: Miles Stipanovich<br>600 Grant Street, Room 1500<br>Pittsburgh, PA 15219-2800 (re:Alside) |
| 3. Black McCuskey Souers & Arbaugh<br>Attn: Victor Marsh<br>1000 United Bank Plaza<br>220 Market Avenue South<br>Canton, OH 44702-2116 (re: Adelphia)  | 11. American Colors, Inc.<br>Attn: Jim Sayre<br>1110 Edgewater Drive<br>Sandusky, OH 44870                                  |
| 4. Parker Hannifin<br>Airborne Division<br>Attn: Chris Burich<br>6035 Parkland Blvd<br>Cleveland, OH 44124-4141  | 12. American Greetings Corp.<br>Attn: Michelle Creger<br>One American Road<br>Cleveland, OH 44144-2938                      |
| 5. KOA Speer Electronics<br>f/k/a Airco Speer Electronics<br>Bolivar Drive, PO Box 547<br>Bradford PA 16701  | 13. American Marietta<br>P.O. Box 11176<br>Southport, NC 28461-1176   |
| 6. Akron Rubber Company<br>R. G. Jeter, Registered Agent<br>147 Kenilworth Drive<br>Akron, OH 44313  | 14. Ashland Chemical, Inc.<br>Robin Lampkin-Isabel<br>P.O. Box 2219<br>Columbus, OH 43216 (re: Cleveland, OH)               |
| 7. Allegheny Label Co.<br>1224 Freedom Road<br>Cranberry Township, PA 16066  | 15. Ashland Chemical, Inc.<br>Robin Lampkin-Isabel<br>P.O. Box 2219<br>Columbus, OH 43216 (re: Freedom, PA)                 |
| 8. Chemcentral<br>f/k/a Allegheny Solvents & Chemical<br>P.O. Box 730<br>Bedford Park, IL 60499-0730   | 16. Ashland Chemical, Inc.<br>Robin Lampkin-Isabel<br>P.O. Box 2219<br>Columbus, OH 43216 (re: Dayton, OH)                  |

17. Ashland Chemical, Inc.  
Robin Lampkin-Isabel  
P.O. Box 2219  
Columbus, OH 43216 (re: Akron, OH)
18. Astatic Corp.  
P.O. Box 120  
Conneaut, OH 44030
19. Auto & Industrial Finishes  
Attn: Kevin R. Kehoe  
9070 Marshall Road  
Cranberry Township, PA 16066
20. Squire, Sanders & Dempsey L.L.P  
Attn: Douglas McWilliams  
4900 Key Tower  
127 Public Square  
Cleveland, OH 44114-1304 (re: Avery Label)
21. Thompson Hine  
Attn: Heidi Goldstein  
3900 Key Center  
127 Public Square  
Cleveland, OH 44114-1291 (re:BF Goodrich)
22. McGregor & Patterson  
Attn: J Russell McGregor  
105 Smithfield Street, Suite 200  
Pittsburgh, PA 15222  
(re: Ball/Ranbar/BBT)
23. Squires Sanders & Dempsey  
Attn: Vincent Atriano  
1300 Huntington Center  
41 South High Street  
Columbus, OH 43215 (re: Barr, Inc.)
24. Basic Packaging Machinery Corp.  
642 Sugar Lane  
Elyria, OH 44035
25. Walton Paint Company  
d/b/a Beaver Paint Company  
Attn: Joseph Walton  
108 Main Street  
Jamestown, PA 16134
26. Thompson Hine  
Attn: Andrew Kolesar  
312 Walnut Street, 14<sup>th</sup> floor  
Cincinnati, OH 45202-4029  
(re: Berenfield Steel Drum)
27. Black McCuskey Souers & Arbaugh  
Attn: Victor Marsh  
1000 United Bank Plaza  
220 Market Avenue South  
Canton, OH 44702-2116 (re: Bison)
28. Vorys, Sater, Seymour and Pease  
Attn: Joe Blasko  
52 East Gay Street  
Columbus, OH 43216-1008  
(re: Borden Chemical)
29. Borg Warner  
Attn: Stephanie Bransfield  
200 South Michigan Avenue  
Chicago, IL 60604
30. Lathrop & Gage  
Attn: Jonathan Haden  
2345 Grand Blvd., Ste 2800  
Kansas City, MO 64108-2612 (re: BFI)
31. Whyte, Hirschboeck & Dudek  
Attn: Jennifer Buzdecky  
111 East Wisconsin Ave., Ste 2100  
Milwaukee, WI 53202 (re: Bucyrus Erie)
32. Bud Industries, Inc.  
Attn: Ravi Jain  
P.O. Box 998  
Willoughby, OH 44096

33. Aztec Peroxides, Inc.  
f/k/a Carmac Chemical  
555 Garden Street  
Elyria, OH 44035
34. CNA Holdings  
f/k/a Celanese Coatings  
Attn: Tema Macarro  
86 Morris Avenue  
Summit, NJ 07901
35. Checkmate Boats  
3691 State Route 4  
Bucyrus, OH 44820
36. McDermott, Will & Emery  
Attn: Louis Rundio, Jr.  
227 W. Monroe St.  
Chicago, IL 60606 (re: Chemcentral)
37. Doepken Keevican & Weiss, P.C.  
Attn: Terry L. Schnell  
58th Floor, USX Tower  
600 Grant Street  
Pittsburgh, PA 15219-2703 (re: Chemical Dist.)
38. Waste Management  
f/k/a Chem-Trol Pollution Control Services  
Attn: James Forney  
3970 Heritage Avenue  
Okemos, MI 48864
39. Chemtron Corp.  
Attn: Richard Timm  
35850 Schneider Ct.  
Avon, OH 44011
40. Howard & Howard  
Attn: Gary Peters  
39400 Woodward Avenue, Suite 101  
Bloomfield Hills, MI 48304-5151  
(Re: Chrysler Plastics)
41. DaimlerChrysler Corporation  
f/k/a Chrysler Plastic Products Co.  
Attn: Kathleen Hennessey, CIMS 485-13-62  
1000 Chrysler Drive  
Auburn Hills, MI 48236-2808
41. Ingersoll-Rand  
Attn: Donna McMahon  
200 Chestnut Ridge Road  
Woodcliff Lake, NJ 07677  
(re: Clark Equipment)
42. Clyde Paint & Supply Co.  
Gerald F. Thomas, Registered Agent  
301 Lisa Ann Drive  
Huron, OH 44839
43. Cytec Industries, Inc.  
Attn: Thomas Waldman  
Five Garret Mtn Plaza  
West Paterson, NJ 07424  
(re: Conap, Inc.)
44. Conneaut Leather, Inc.  
Attn: Howard Bartow  
4114 Carpenter Road  
Ashtabula, OH 44004
45. Dwyer, Kinburn, Hall & Golub  
Attn: Terrence Dwyer  
16 Furler Street  
Totowa, NJ 07511-0437  
(re: Continental Can/Kiewit)
46. Crown Cork & Seal  
f/k/a Continental Can  
Attn: William Gallagher  
One Crown Way  
Philadelphia, PA 19154
46. Cuyohoga Chemical Company  
Attn: Paul Moffat  
3470 West 140<sup>th</sup> Street  
Cleveland, OH 44111-2431

47. Thompson Hine  
Attn: Michael Cyphert  
3900 Key Center  
127 Public Square  
Cleveland, OH 44114-1291  
(re: DeSantis Coatings)
48. Baker & Hostetler, LLP  
Attn: Jason Perdion  
3200 National City Center  
1900 East 9<sup>th</sup> Street  
Cleveland, OH 44114-3485  
(re: Dorn Color)
49. Dow Corning Corporation  
Attn: Barbara Rather (#CO1242)  
2200 West Salzburg Road  
Midland, MI 48686-0994
50. E.I. duPont de Nemours  
f/k/a DuPont Chemical  
Attn: Barbara Gravely, D-7083  
1007 Market Street  
Wilmington, DE 19898
51. Duracote Corporation  
Attn: Gerald Donnelly  
350 North Diamond Street  
Ravenna, OH 44266-1209
52. Kovitz Shifrin & Waitzman  
Attn: Richard Hillsberg  
750 Lake Cook Road, Suite 350  
Buffalo Grove IL 60089 (re: Eagle Rubber)  
  
Alan Plotkin  
18 East 48<sup>th</sup> Street, Floor 18  
New York, NY 10017 (re: Eagle Rubber)
53. Eastman Kodak  
Attn: Elliott Stern  
343 State Street  
Rochester, NY 14650-0217
54. Centria  
f/k/a Elwin G. Smith  
1005 Beaver Grade Road  
Coraopolis, PA 15108  
  
AK Steel Corporation  
f/k/a Elwin G. Smith  
703 Curtis Street  
Middletown, OH 45043
55. Elyria Concrete Step Company  
Attn: Everett Goad  
8015 North Murray Ridge Road  
Elyria, OH 44035
56. Elyria Foundry  
Attn: Samuel Knezevic  
120 Filbert Street  
Elyria, OH 44036  
  
Chromalloy American Corp.  
f/k/a Elyria Foundry  
120 S Central Ave.  
St Louis, MO 63105
57. Dow Chemical Co.  
f/k/a Essex Chemical-Jamestown Finishes  
Attn: Tracy Goad Walter  
2030 Dow Center  
Midland, MI 48676
58. FBC Chemical Corporation  
Attn: Lad Hudac  
P.O. Box 599  
Mars, PA 16046
59. Squire, Sanders & Dempsey L.L.P.  
Attn: Douglas McWilliams  
4900 Key Tower  
127 Public Square  
Cleveland, OH 44114-1304 (re: Avery/Fasson)
60. Joondeph & Bittel  
Attn: Dale Wilson  
50 South Main Street, Suite 700  
Akron, OH 44308 (re: Ferriot Bros)

61. Hanna, Campbell & Powell  
Attn: David Moss  
3737 Embassy Parkway  
P.O. Box 5521  
Akron, OH 44334 (re: Firestone)
- Jones, Day, Reavis & Pogue  
Attn: Heidi Hughes Bumpers  
901 Lakeside Ave.  
Cleveland, OH 44114-1190 (re: Firestone)
62. Mattel, Inc.  
f/k/a Fisher Price Toys  
Attn: Gregg Clark  
333 Continental Blvd.  
El Segundo, CA 90245-5012
- Morrison & Foerster  
Attn: Peter Hsiao  
555 West Fifth Street  
Los Angeles, CA 90013 (re: Fisher Price Toys)
63. Ford Motor Company  
Attn: Kathy Hofer  
Parklane Towers West Ste 1500  
Three Parklane Blvd.  
Dearborn, MI 48126-2568
64. Foseco, Inc.  
Attn: Frank Simcic  
20200 Sheldon Road  
Cleveland, OH 44142 (re: Brookpark)
65. Foseco, Inc.  
Attn: Frank Simcic  
20200 Sheldon Road  
Cleveland, OH 44142 (re: Conneaut)
66. Vorys, Sater, Seymour and Pease  
Attn: Martyn Brodnik  
52 East Gay Street  
P.O. Box 1008  
Columbus, OH 43216-1008  
(re: Franklin Int'l/Glue)
67. General Electric Company  
Attn: Michael Elder  
320 Great Oaks Office Park, Ste. 323  
Albany, NY 12203
- Young Sommer LLC  
Attn: Dean Sommer  
Five Palisades Drive  
Albany, NY 12205  
(re: General Electric)
68. General Motors  
Attn: Linda Bentley (MC 482-C24-D24)  
300 Renaissance Center  
Detroit, MI 48243 (re: Lordstown)
69. Continental General Tire  
f/k/a General Tire  
1800 Continental Blvd.  
Charlotte, NC 28273
70. Glidden Co.  
Attn: Robert Kovalak  
925 Euclid Avenue, Suite 900  
Cleveland, OH 44115
71. Goodyear Tire & Rubber Co.  
Attn: Neal Rountree  
1144 E. Market Street  
Akron, OH 44316
72. Reale & Fossee  
Attn: C.S. Fossee  
625 Stanwix Street, Ste 2405  
Pittsburgh, PA 15222 (re: Gordon Terminal)
73. GLS Corporation  
Attn: Nancy Dehmlow (Great Lakes Terminal)  
P.O. Box 3208  
Arlington Heights, IL 60006-3208
74. Centria  
f/k/a H.H. Robertson  
1005 Beaver Grade Road  
Coraopolis, PA 15108

- McDermott, Will & Emery  
Attn: Colleen E. Baime  
227 West Monroe  
Chicago, IL 60606  
(Re: Heico/HH Robertson)
75. Goldberg, Stinnett, Meyers & Davis  
Attn: Katherine Ray  
44 Montgomery St., Ste 2900  
San Francisco, CA 94104 (re: Hexcel)
- Hexcel Corporation  
Attn: A. William Nosil  
11711 Dublin Boulevard  
Dublin, CA 94568
- David B. Graham  
Baker & Hostetler LLP  
1900 East 9th Street  
Cleveland, OH 44114-3485  
(re: Hexcel)
76. ITW Food Equipment  
Attn: Steve Adams  
701 S Ridge Avenue  
Troy, OH 45374 (re: Hobart/Grove City)
77. ITW Food Equipment  
Attn: Steve Adams  
701 S Ridge Avenue  
Troy, OH 45374 (re: Hobart/Dayton)
78. Black McCuskey Souers & Arbaugh  
Attn: Victor Marsh  
1000 United Bank Plaza  
220 Market Avenue South  
Canton, OH 44702-2166  
(re: Hoover Company)
79. Calfee, Halter & Griswold LLP  
Attn: Susan Strom  
1400 McDonald Investment Center  
800 Superior Avenue  
Cleveland, OH 44114-2688 (re: Hukill)
80. Henkel Corporation  
f/k/a Dexter Corp./Dexter-Hysol  
Attn: Kevin Chu  
2200 Renaissance Blvd.  
Gulph Mills, PA 19406
- Kenneth Arnold  
49 Valley Drive-Suite 200  
Furlong, PA 18925 (re: Henkel/Dexter)
- Akzo Nobel Inc.  
Attn: Brian Curtis  
300 South Riverside Plaza, Suite 2200  
Chicago, IL 60606 (re: Dexter Corp.)
81. Industrial Chemical Corp.  
f/k/a Industrial Alkali  
885 W Smith Rd.  
Medina, OH 44256
82. J. C. Whitlam Manufacturing Co.  
Attn: Steve Carey  
P.O. Box 380  
Wadsworth, OH 44282-0380
83. Jamestown Paint & Varnish Co.  
Attn: Joseph Walton  
108 Main Street  
Jamestown, PA 16134
84. Duramax, Inc.  
f/k/a Johnson Plastics  
16025 Johnson Street  
Middlefield, OH 44062
85. Kalcor Coatings Co.  
Attn: Newton Zucker  
37721 Stevens Blvd.  
Willoughby, OH 44094
86. Foley, Hoag & Eliot  
Attn: Monica Conyngham  
One Post Office Square  
Boston, MA 02109  
(Re: Kenner/Hasbro)

87. Shumaker, Loop & Kendrick -  
Attn: Jeffrey Fort  
1000 Jackson  
Toledo, OH 43624  
(re: Lake Shore Industries)
88. Liberty Solvents & Chemical Co.  
Attn: Raymond Pasquali  
9429 Ravenna Road  
Twinsburg, OH 44087
89. BASF Corporation  
Attn: Harry Baumgartner  
3000 Continental Drive - North  
Mount Olive NJ 07828  
(re: BASF/Limbacher)
90. Jones, Day, Reavis & Pogue  
Attn: John Rego  
901 Lakeside Ave.  
Cleveland, OH 44114-1190  
(re: Lorain Products)
91. Babst, Calland, Clements & Zominir  
Attn: Michele Gutman  
Two Gateway Center  
Pittsburgh, PA 15222 (re: Luxaire)  
  
VIACOM Inc.  
Attn: Linda Kelley  
MC745  
11 Stanwix Street  
Pittsburgh, PA 15222-1384 (re: Luxaire)
92. Mahoning Paint Corporation  
653 James St.  
Youngstown, OH 44502
93. McMahon, DeGulis, Hoffman & Lombardi  
Attn: Gregory DeGulis  
812 Huron Road, Ste 650  
Canton, OH 44115-1126  
(re: Mameco International)
94. Marlite Division  
202 Harger Street  
Dover, OH 44622
95. Masonite Corporation  
One South Wacker Drive, Suite 3600  
Chicago, IL 60606
96. Miller Studio, Inc  
Attn: John Basiletti  
P.O. Box 997  
New Philadelphia, OH 44663  
  
Lundgren Goldthorpe & Zumbar  
Attn: Andrew Zumbar  
526 East Main Street  
Alliance, OH 44601-0595  
(re: Miller Studio)
97. Exxon Mobil  
Attn: J Kyle Harris  
601 Jefferson Room 1221  
Houston, TX 77002 (re: Mobil Chemical)
98. Warren and Young  
Attn: Stuart Cordell  
134 W 46th Street  
Ashtabula, OH 44005-2300  
(re: Molded Fiberglass)
99. National Acme  
170 E. 131st Street  
Cleveland, OH 44108
100. Rexam Beverage Can Americas  
f/k/a National Can  
8770 W Bryn Mawr, Floor 1  
Chicago, IL 60631
101. Neville Chemical Company  
Attn: Thomas McKnight  
2800 Neville Road  
Pittsburgh, PA 15225-1496



148. Whirlpool Corp. - Clyde Division  
Attn: Larry Yinger  
2000 N M-63  
Benton Harbor, MI 49022-2692
149. Whirlpool Corp. - Findlay Division  
Attn: Larry Yinger  
2000 N M-63  
Benton Harbor, MI 49022-2692
150. Buckingham, Doolittle & Burroughs  
Attn: Ralph Amiet  
50 S Main Street  
Akron, OH 44309-1500 (re: Wooster Brush)
151. Yenkin Majestic Paint Corporation  
Attn: Merom Brachman  
1920 Leonard Avenue  
Columbus, OH 43219



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5  
77 WEST JACKSON BOULEVARD  
CHICAGO, IL 60604-3590

March 2, 2001

REPLY TO THE ATTENTION OF:

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

Tommy Armour Golf  
f/k/a Victor Comptometer-Golf  
8350 North Lehigh Avenue  
Morton Grove, IL 60053

RE: The Chemical Recovery Systems Site, Elyria, Ohio  
General Notice of Potential Liability and  
Request for Information

Dear Sir or Madam:

The United States Environmental Protection Agency (U.S. EPA) has documented the release or threatened release of hazardous substances, pollutants and contaminants at the above referenced facility (Site), and is planning to spend public funds to control and investigate these releases. This action will be taken by U.S. EPA pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. §9601 et seq., (CERCLA) as amended by the Superfund Amendments and Reauthorization Act of 1986, Pub. L. No. 99-499, 100 Stat. 1613 (1986) (SARA), unless U.S. EPA determines that such action will be done properly by a responsible party. Responsible parties under CERCLA include the current and former owners and operators, and persons who generated the hazardous substances or were involved in transport, treatment, or disposal of them at the Site. Under Section 107(a) of CERCLA, 42 U.S.C. §9607(a), where the Agency uses public funds to achieve the cleanup of the hazardous substances, responsible parties are liable for all costs associated with the removal or remedial action and all other necessary costs incurred in cleaning up the Site, including investigation, planning and enforcement.

To address the dangers and threats to human health and the environment as quickly as possible, U.S. EPA is currently planning to conduct a Remedial Investigation/Feasibility Study (RI/FS) at the above referenced facility.

The primary objective of the RI/FS is to gather sufficient data to support the selection of the site remedy that will reduce or eliminate risk associated with the contamination at the Site. The Remedial Investigation (RI) involves:

- Characterizing the nature and extent of the risks associated with the contamination in the site soils, sediment, surface water, and groundwater;
- Determining the potential for contaminant transport via air, groundwater, and sediment/surface water pathways;
- Conducting a baseline public health evaluation and an ecological risk assessment; and
- Conducting treatability studies to evaluate the performance and cost of the treatment technologies and to support the design of the selected remedies.

The RI must include waste characterization, geophysical surveys, excavation of test pits, soil sampling and analysis, groundwater sampling and analysis, and the determination of the Site's geologic and hydrogeologic characteristics.

The primary objective of the Feasibility Study (FS) is to develop, analyze, and compare a range of remedial action alternatives through the application of the nine established evaluation criteria. The FS is comprised of two main phases:

- Development and screening of alternatives; and
- Detailed analysis of the alternatives.

The data collected in the RI influences the development of the remedial action alternatives in the FS, which in turn affects the data needs and scope of the treatability studies and subsequent field studies.

Prior to the start of any of these activities, the following plans will have to be developed and approved by the U. S. EPA:

- Site work plan;
- Site health and safety plan;
- Site security plan;

- Site sampling and analysis plan for the Toxic Compound List/ Toxic Analyte List and Toxicity Characteristic Leaching Procedures parameters;
- Site Quality Assurance Project Plan;
- Site Community Relations Plan.

For additional information regarding the policy and guidance associated with conducting RI/FS studies see OSWER Directive (9355.3-01) Guidance for Conducting Remedial Investigations and Feasibility Studies (RI/FS) Under CERCLA, October 1988.

U.S. EPA has received information that you may have owned or operated or generated or transported hazardous substances that were disposed of at the Site. By this letter, U.S. EPA notifies you of your potential liability with regard to this matter and encourages you, as a potentially responsible party, to reimburse U.S. EPA for costs incurred to date and to voluntarily perform or finance the response activities that U.S. EPA has determined or will determine are required at the Site. U.S. EPA is willing to discuss with you the entry of an appropriate administrative consent order under which you would perform or finance response activities and reimburse U.S. EPA for its costs. If a consent order cannot be promptly concluded, U.S. EPA may issue a unilateral order under Section 106 of CERCLA, requiring you to perform specified work. Under Sections 106 and 107 of CERCLA, you may be liable for reimbursement of U.S. EPA's costs, for statutory penalties, and for treble damages for noncompliance with such an order.

Attachment 8 is a list of the names and addresses of any other potentially responsible parties (PRPs) to whom this notification is being sent. This list is provided to assist you in contacting other PRPs in this matter and to negotiate with U.S. EPA.

Enclosed is a U.S. EPA Small Business Regulatory Enforcement Fairness Act Information Sheet (Attachment 7). The information sheet may be helpful, if you are subject to enforcement action by U.S. EPA and you are a qualified small business.

As a potentially responsible party, you should notify U.S. EPA in writing within ten (10) days of receipt of this letter of your willingness to perform or finance the activities described above. If U.S. EPA does not receive a timely response, U.S. EPA will assume that you do not wish to negotiate a resolution of your potential responsibility in connection with the Site and that you have declined any involvement in performing the response activities.

Your letter should indicate the appropriate name, address, and telephone number for further contact with you. If you are already involved in discussions with state or local authorities, engaged in voluntary cleanup action, or involved in a lawsuit regarding this Site, you should continue such activities as you see fit. This letter is not intended to advise you or direct you to restrict or discontinue any such activities; however, you are advised to report the status of those discussions or actions in your response to this letter and to provide a copy of your response to any other parties involved in those discussions or actions.

In addition, U.S. EPA is seeking to obtain certain other information from you pursuant to its authority under Section 104(e) of CERCLA, 42 U.S.C. §9604(e), for the purpose of enforcing CERCLA and to assist in determining the need for response to a release of hazardous substance(s) under CERCLA. The Administrator of the U.S. EPA has the authority to require any person who has or may have information relevant to any of the following to furnish U.S. EPA with such information: (1) the identification, nature, or quantity of materials which have been or are generated, treated, stored or disposed of at, or transported to, a facility; (2) the nature or extent of a release or threatened release of a hazardous substance, pollutant or contaminant at or from a facility; and (3) the ability of a person to pay for or perform a cleanup. Attachment 1 is a summary of the history of the Chemical Recovery Systems Site.

Pursuant to Section 104(e) of CERCLA, you are hereby requested to submit a response to this Information Request and its questions in Attachment 2 concerning the Chemical Recovery Systems Site at 142 Locust Street in Elyria, Ohio. Instructions to guide you in the preparation of your response are in Attachment 3. Definitions of the terms used in this Information Request and in the questions are in Attachment 4.

This request is directed to your company, its officers, directors, and employees, and its subsidiaries, divisions, facilities and their officers, directors, and employees. The information sought herein must be sent to U.S. EPA within thirty (30) calendar days of your receipt of this letter. Failure to respond fully and truthfully to this request, or to adequately justify any failure to respond, may result in an enforcement action against you by U.S. EPA under Section 104 of CERCLA, as amended.

The information requested herein must be provided notwithstanding its possible characterization as confidential information or trade secrets. You may request, however, that any such information be handled as confidential business information. A request for confidential treatment must be made when the information is provided, since any information not so identified will not be accorded this protection by the U.S. EPA. Information claimed as confidential will be handled in accordance with the provisions of 40 C.F.R. Part 2. To request that the Agency treat your information as confidential, you must follow the procedures outlined in Attachment 5, including the requirement that you support your claim for confidentiality.

The written statements submitted pursuant to this request must be notarized and submitted under an authorized signature certifying that all information contained therein is true and accurate to the best of the signatory's knowledge and belief. Moreover, any documents submitted to U.S. EPA pursuant to this information request should be certified as true and authentic to the best of the signatory's knowledge and belief. Should the signatory find, at any time after the submittal of the requested information, that any portion of the submitted information is false, the signatory should so notify U.S. EPA. If any answer certified as true should be found to be untrue, the signatory can and may be prosecuted pursuant to 18 U.S.C. §1001. The U.S. EPA has the authority to use the information requested herein in any administrative, civil or criminal action.

This information request is not subject to the approval requirements of the Paperwork Reduction Act, 44 U.S.C. section 3501 et seq.

Send your responses to both the notice of potential liability within ten (10) days and the information requests within thirty (30) days, to:

U.S. Environmental Protection Agency  
Deena Sheppard-Johnson, SR-6J  
Remedial Enforcement Support Section  
77 West Jackson Blvd.  
Chicago, Illinois 60604

If you have any legal questions, please call Thomas Nash, Assistant Regional Counsel, at (312) 353-0552. If you have technical questions about this Site, call Gwendolyn Massenburg, Remedial Project Manager, at (312) 886-0983. Address all other questions to Deena Sheppard-Johnson, Enforcement Specialist, at (312) 886-7048.

Due to the nature of the problem at this Site and the attendant legal ramifications, U.S. EPA strongly encourages you to submit a written response within the time frames specified. We trust you will give this matter your immediate attention.

Sincerely,

*Donald J. Bruce*

for James N. Mayka, P.E., Chief  
Remedial Response Branch #2

Enclosures:

Attachments: 1: Site History  
2: Questions  
3: Instructions  
4: Definitions  
5: Confidential Business Information  
6: Legal Authority  
7: Small Business Notice  
8: List of Potentially Responsible Parties (PRPs)

Attachment 1  
SITE HISTORY

The Chemical Recovery Systems Site (CRS Site) is located at 142 Locust Street in Elyria, Ohio. The CRS Site is bordered on the west by the East Branch of the Black River, to the north and east by the Engelhard (formerly Harshaw) Chemical Company, and to the south by M&M Aluminum Siding Company. The CRS Site is located in a predominantly industrial and commercial area near the central business district of Elyria. The CRS Site consists of a four acre parcel that is currently leased to M&M Aluminum which uses the Site property to store aluminum siding. Most of the four acre parcel is empty. Two buildings are currently on the CRS Site: a former warehouse and office building and the masonry shell of a building that housed a Rodney Hunt still. These buildings are located in the southeast corner of the CRS Site. The foundation of a building that housed a Brighton still is located in the northeast corner of the CRS Site. The CRS Site is fenced on all sides except the side bounded by the East Branch of the Black River.

Beginning no later than the 1940s the CRS Site was used for commercial and industrial purposes such as a coal yard. During the 1950s, Harshaw Chemical briefly leased the CRS Site to store saggars. In 1960, Russell Obitts leased the CRS Site property and relocated his existing business, the Obitts Chemical Company, which reclaimed spent organic solvents, to the CRS Site property. Later Russell Obitts and Dorothy Obitts purchased this property.

In 1974, Chemical Recovery Systems, Inc., a Michigan corporation (CRS, Inc., - MI), assumed operations at the CRS Site through a stock purchase agreement with the Obitts Chemical Company. In a separate agreement, CRS, Inc., - MI leased the CRS Site property from Russell Obitts and Dorothy Obitts in a lease agreement with an option to purchase. A year later CRS, Inc., - MI exercised its purchase option. CRS, Inc., - MI continued operations at the CRS Site until 1981.

Operating as Obitts Chemical Company and then as CRS, Inc., - MI the facility located on the Site received spent organic solvents from industrial facilities and reclaimed the solvents through distillation processes. Both owner/operators hauled contaminated solvents to the Site facility in their own tanker trucks and in stake trucks hauling 55 gallon drums. Spent solvents were stored in above ground tanks and 55 gallon drums. Soil contamination



occurred through leakage and spills. Spent solvents that were transported to the CRS Site include, but are not limited to, the following: acetone, hexane, isopropyl alcohol, methylene ethyl ketone (MEK), tetrachloroethane, toluene, trichloroethane, and xylene. Analysis of samples that U.S. Environmental Protection Agency (U.S. EPA) collected on November 26, 1979, at the CRS Site detected PCE, ethyl benzene, and naphthalene. A solvent sample collected on February 5, 1980 contained toluene, ethyl benzene, xylene, and naphthalene. During a visit on February 5, 1980 by U.S. EPA to the CRS Site, an employee of the facility identified specific solvents reclaimed as well as paint solvents.

Because the CRS Site posed imminent danger to the local population and the environment, U.S. EPA initiated an action under the Resource Recovery and Conservation Act (RCRA). On October 7, 1980, the U.S. Department of Justice (U.S. DOJ), on behalf of U.S. EPA, filed an action against CRS, Inc., - MI in the U.S. District Court, Northern District of Ohio, to abate an imminent and substantial endangerment to public health and the environment from the CRS Site. On July 12, 1983, the District Court entered a Consent Decree that required CRS, Inc., - MI to take these and other actions: excavate all visibly contaminated soils identified during a joint U.S. EPA and CRS, Inc., - MI inspection; excavate the perimeter of the Brighton still to a specified depth and distance; dispose of the excavated soil at an approved waste disposal site; backfill the excavated areas; and grade the CRS Site. After its inspection of the CRS Site November 7, 1983, U.S. EPA concluded that CRS, Inc., - MI was in compliance with the July 12, 1983 Consent Decree.

Because hazardous substances released at the CRS-Site remain in the soil and groundwater at elevated levels, U.S. EPA is now taking response actions, under the authority of Section 104 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 and its amendments.

Attachment 2  
QUESTIONS

1. Identify all persons consulted in the preparation of the answers to these questions.

2. Identify all documents consulted, examined, or referred to in the preparation of the answers to these questions and provide copies of all such documents.

3. If you have reason to believe that there may be persons able to provide a more detailed or complete response to any question or who may be able to provide additional responsive documents, identify such persons.

4. List the EPA Identification Numbers of the Respondent.

5. Identify the acts or omissions of any person, other than your employees, contractors, or agents, that may have caused the release or threat of release of hazardous substances, pollutants, or contaminants and damages resulting therefrom at the CRS Site.

6. Identify all persons including respondent's employees, who have knowledge or information about the generation, use, treatment, storage, disposal, or other handling of material at or transportation of materials to the Site (operating as Obitts Chemical Company or Chemical Recovery Systems, Inc., at 142 Locust Street, Elyria, Ohio).

7. Describe all arrangements that Respondent may have or may have had with each of the following companies and persons:

- a) Obitts Chemical Company
- b) Russell Obitts
- c) Chemical Recovery Systems, Inc.
- d) Peter Shagena
- e) James Freeman
- f) James "Jim" Jackson
- g) Donald Matthews
- h) Bob Spears
- i) Bill Bromley
- j) Carol Oliver

- k) Nolwood Chemical Company, Inc.
- l) Art McWood
- m) Chuck Nolton
- n) Michigan Recovery System, Inc..
- o) Chemical Recovery Systems of Michigan

8. Set forth the dates during which the Respondent engaged in any of the following activities:

- a) generation of hazardous materials which were sent to the CRS Site;
- b) transportation of any material to the CRS Site.

9. Identify all persons, including yourself, who may have arranged for disposal or treatment, or arranged for transportation for disposal or treatment, of materials, including, but not limited to, hazardous substances, at the CRS Site. In addition, identify the following:

- a) The persons with whom you or such other persons made such arrangements;
- b) Every date on which such arrangements took place;
- c) For each transaction, the nature of the material or hazardous substance, including the chemical content, characteristics, physical state (e.g., solid, liquid), and the process for which the substance was used or the process which generated the substance;
- d) The owner of the materials or hazardous substances so accepted or transported;
- e) The quantity of the materials or hazardous substances involved (weight or volume) in each transaction and the total quantity for all transactions;
- f) All tests, analyses, and analytical results concerning the materials;
- g) The person(s) who selected the CRS Site as the place to which the materials or hazardous substances were to be transported;
- h) The amount paid in connection with each transaction, the method of payment, and the identity of the person from whom payment was received;

i) Where the person identified in g., above, intended to have such hazardous substances or materials transported and all evidence of this intent;

j) Whether the materials or hazardous substances involved in each transaction were transshipped through, or were stored or held at, any intermediate site prior to final treatment or disposal;

k) What was actually done to the materials or hazardous substances once they were brought to the CRS Site;

l) The final disposition of each of the materials or hazardous substances involved in such transactions;

m) The measures taken by you to determine the actual methods, means, and site of treatment or disposal of the material and hazardous substance involved in each transaction;

n) The type and number of containers in which the materials or hazardous substances were contained when they were accepted for transport, and subsequently until they were deposited at the CRS Site, and all markings on such containers;

o) The price paid for (i) transport, (ii) disposal, or (iii) both of each material and hazardous substance;

p) All documents containing information responsive to a - o above, or in lieu of identification of all relevant documents, provide copies of all such documents;

q) All persons with knowledge, information, documents responsive to a - p above.

10. Identify all liability insurance policies held by Respondent from 1960 to the present. In identifying such policies, state the name and address of each insurer and of the insured, the amount of coverage under each policy, the commencement and expiration dates for each policy, whether or not the policy contains a "pollution exclusion" clause, and whether the policy covers or excludes sudden, nonsudden, or both types of accidents. In lieu of providing this information, you may submit complete copies of all relevant insurance policies.

11. Provide copies of all income tax returns, including all supporting schedules, sent to the Federal Internal Revenue Service in the last five years.

12. If Respondent is a Corporation, respond to the following requests:

a) Provide a copy of the Articles of Incorporation and By-Laws of the Respondent.

b) Provide Respondent's financial statements for the past five fiscal years, including, but not limited to, those filed with the Internal Revenue Service and Securities and Exchange Commission.

c) Identify all of Respondent's current assets and liabilities and the person(s) who currently own(s) or is (are) responsible for such assets and liabilities.

d) Identify the Parent Corporation and all Subsidiaries of the Respondent.

13. If Respondent is a Partnership, respond to the following requests:

a) Provide copies of the Partnership Agreement;

b) Provide Respondent's financial statements for the past five fiscal years, including, but not limited to, those filed with the Internal Revenue Service and Securities and Exchange Commission;

c) Identify all of Respondent's current assets and liabilities and the person(s) who currently own(s) or is (are) responsible for such assets and liabilities.

d) Identify all subsidiaries of the Respondent.

14. If Respondent is a Trust, respond to the following requests:

a) Provide all relevant agreements and documents to support this claim.

b) Provide Respondent's financial statements for the past five fiscal years, including, but not limited to, those filed with the Internal Revenue Service and Securities and Exchange Commission.

c) Identify all of Respondent's current assets and liabilities and the person(s) who currently own(s) or is (are) responsible for such assets and liabilities.

ATTACHMENT 3  
INSTRUCTIONS

1. Answer each of the questions in this Information Request separately.
2. Precede each answer with the number of the question to which it corresponds.
3. In answering each question, identify all persons and contributing sources of information.
4. Although the U.S. EPA seeks your cooperation in this investigation, CERCLA requires that you respond fully and truthfully to this Information Request. False, fictitious, or fraudulent statements or misrepresentations may subject you to civil or criminal penalties under federal law. Section 104 of CERCLA, 42 U.S.C. § 9604, authorizes [the] U.S. EPA to pursue penalties for failure to comply with that Section, or for failure to respond adequately to requests for submissions of required information.
5. In answering each question, identify all persons and contributing sources of information.
6. You must supplement your response to U.S. EPA if, after submission of your response, additional information should later become known or available. Should you find at any time after the submission of your response that any portion of the submitted information is false or misrepresents the truth, you must notify U.S. EPA as soon as possible.
7. For any document submitted in response to a question, indicate the number of the question to which it responds.
8. You must respond to each question based upon all information and documents in your possession or control, or in the possession or control of your current or former employees, agents, contractors, or attorneys. Information must be furnished regardless of whether or not it is based on your personal knowledge, and regardless of source.

9. Your response must be accompanied by the following statement, or one that is substantially equivalent:

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gathered and evaluated the information submitted.

Based upon my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

The individual who prepared the response or the responsible corporate official acting on behalf of the corporation must sign and date the statement, affidavit, or certification. Include the corporate official's full title.

10. If any of the requested documents have been transferred to others or have otherwise been disposed of, identify each document, the person to whom it was transferred, describe the circumstances surrounding the transfer or disposition, and state the date of the transfer or disposition.
11. All requested information must be provided notwithstanding its possible characterization as confidential information or trade secrets. If desired, you may assert a business confidentiality claim by means of the procedures described in Attachment 5.

ATTACHMENT 4  
DEFINITIONS

1. As used in this letter, words in the singular also include the plural and words in the masculine gender also include the feminine and vice versa.
2. The term *person* as used herein includes, in the plural as well as the singular, any natural person, firm, contractor, unincorporated association, partnership, corporation, trust or governmental entity, unless the context indicates otherwise.
3. *The Site* referenced in these documents shall mean the Chemical Recovery Systems Site located in Elyria, Ohio.
4. The term *hazardous substance* shall have the same definition as that contained in Section 101(14) of CERCLA, including any mixtures of such hazardous substances with any other substances, including petroleum products.
5. The term, *pollutant* or *contaminant*, shall have the same definition as that contained in Section 101(33) of CERCLA, and includes any mixtures of such pollutants and contaminants with any other substances.
6. The term *release* shall have the same definition as that contained in Section 101(22) of CERCLA, and means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment, including the abandonment or discarding of barrels, containers, and other closed receptacles containing any hazardous substance, pollutant, or contaminant.
7. The term *identify* means, with respect to a natural person, to set forth the person's full name, present or last known business address and business telephone number, present or last known home address and home telephone number, and present or last known job title, position or business.
8. The term *identify* means, with respect to a corporation, partnership, business trust or other association or business entity (including a sole proprietorship), to set forth its full name, address, legal form (e.g., corporation, partnership[, etc.]), organization, if any, and a brief description of its business.



9. The term *identify* means, with respect to a document, to provide its customary business description, its date, its number, if any (invoice or purchase order number), the identity of the author, addressor, addressee and/or recipient, and the substance or the subject matter.
10. The term *you, yours, or Respondent* shall mean the addressee of this Request, the addressee's officers, managers, employees, contractors, trustees, predecessors, partners, successors, assigns, subsidiaries and agents.
11. The term *dump* as used herein shall mean an accumulation of refuse and discarded materials and/or a place where such materials are dumped.
12. All terms not defined herein shall have their ordinary meaning, unless such terms are defined in CERCLA, RCRA, 40 C.F.R., Part 300 or 40 C.F.R., Part 260-280, in which case, the statutory or regulatory definitions shall apply.

ATTACHMENT 5  
CONFIDENTIAL BUSINESS INFORMATION

You may consider some of the information confidential that the U.S. Environmental Protection Agency (U.S. EPA or Agency) is requesting. You cannot withhold information or records upon that basis. The Regulations at 40 C.F.R. Part 2, Section 200 et seq. require that the U.S. EPA affords you the opportunity to substantiate your claim of confidentiality before the Agency makes a final determination on the confidentiality of the information.

You may assert a business confidentiality claim covering part or all of the information requested, in the manner described by 40 C.F.R. 2.203(b). Information covered by such a claim will be disclosed by the U.S. EPA only to the extent and only by means of the procedures set forth in 40 C.F.R. Part 2, Subpart B. (See 41 Federal Register 36902 et seq. (September 1, 1976); 43 Federal Register 4000 et seq. (December 18, 1985).) If no such claim accompanies the information when the U.S. EPA receives it, the information may be made available to the public by the Agency without further notice to you. Please read carefully these cited regulations, together with the standards set forth in Section 104(e)(7) of Comprehensive Environmental Response Compensation Liability Act (CERCLA), because, as stated in Section 104(e)(7)(ii), certain categories of information are not properly the subject of a claim of confidential business information.

If you wish the U.S. EPA to treat the information or record as "confidential", you must advise the U.S. EPA of that fact by following the procedures described below, including the requirement for supporting your claim of confidentiality. To assert a claim of confidentiality, you must specify which portions of the information or documents you consider confidential. Please identify the information or document that you consider confidential by page, paragraph, and sentence. You must make a separate assertion of confidentiality for each response and each document that you consider confidential. Submit the portion of the response that you consider confidential in a separate, sealed envelope. Mark the envelope "confidential", and identify the number of the question to which it is the response.

For each assertion of confidentiality, identify:

1. The period of time for which you request that the Agency consider the information confidential, e.g., until a specific date or until the occurrence of a specific event;
2. The measures that you have taken to guard against disclosure of the information to others;
3. The extent to which the information has already been disclosed to others and the precautions that you have taken to ensure that no further disclosure occurs;
4. Whether the U.S. EPA or another federal agency has made a pertinent determination on the confidentiality of the information or document. If an agency has made such a determination, enclose a copy of that determination;
5. Whether disclosure of the information or document would be likely to result in substantial harmful effects to your competitive position. If you believe such harm would result from any disclosure, explain the nature of the harmful effects, why the harm should be viewed as substantial, and the causal relationship between disclosure and the harmful effect. Include a description of how a competitor would use the information;
6. Whether you assert that the information is voluntarily submitted as defined by 40 C.F.R. 2.201(I). If you make this assertion, explain how the disclosure would tend to lessen the ability of the U.S. EPA to obtain similar information in the future;
7. Any other information that you deem relevant to a determination of confidentiality.

Please note that pursuant to 40 C.F.R. 2.208(e), the burden of substantiating confidentiality rests with you. The U.S. EPA will give little or no weight to conclusory allegations. If you believe that facts and documents necessary to substantiate confidentiality are themselves confidential, please identify them as such so that the U.S. EPA may maintain their confidentiality pursuant to 40 C.F.R. 2.205(c). If you do not identify this information and documents as "confidential", your comments will be available to the public without further notice to you.

ATTACHMENT 6  
DESCRIPTION OF LEGAL AUTHORITY

The federal Superfund law (the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601, et seq. (commonly referred to as CERCLA or Superfund) gives U.S. EPA the authority to, among other things: 1) assess contaminated sites, 2) determine the threats to human health and the environment posed by each site, and, 3) clean up those sites.

Under Section 104(e)(2) of CERCLA, 42 U.S.C. § 9604 (e)(2), U.S. EPA has broad information gathering authority which allows U.S. EPA to require persons to furnish information or documents relating to:

A. The identification, nature, and quantity of materials which have been or are generated, treated, stored, or disposed of at a vessel or facility, or transported to a vessel or facility;

B. The nature or extent of a release or threatened release of a hazardous substance or pollutant or contaminant at/or from a vessel or facility;

C. The ability to pay the costs of the clean-up.

Compliance with this Information Request is mandatory. Failure to respond fully and truthfully to each question within this Information Request and within the prescribed time frame can result in an enforcement action by U.S. EPA pursuant to Section 104(e)(5) of CERCLA. This Section also authorizes an enforcement action with similar penalties if the recipient of the Request does not respond and does not justify the failure to respond. Other statutory provisions (18 U.S.C. § 1001) authorize separate penalties if the responses contain false, fictitious or fraudulent statements. The U.S. EPA has the authority to use the information requested in this Information Request in an administrative, civil or criminal action.

## Attachment 7

### Supplemental Information for Small Businesses Subject to an U.S. EPA Enforcement Action

The United States Environmental Protection Agency (EPA) offers small businesses a wide variety of compliance assistance resources and tools designed to assist businesses to comply with federal and state environmental laws. These resources can help businesses understand their obligations, improve compliance and find cost-effective ways to comply through the use of pollution prevention and other innovative technologies.

#### Websites

EPA offers a great deal of compliance assistance information and materials for small businesses on the following Websites, available through public libraries:

|  |   |
|--|---|
| ➡ <a href="http://www.epa.gov">www.epa.gov</a>   | <i>EPA's Home Page</i>                          |
| ➡ <a href="http://www.smallbiz-enviroweb.org">www.smallbiz-enviroweb.org</a>                       | <i>EPA's Small Business Home Page</i>           |
| ➡ <a href="http://www.smallbiz-enviroweb.org/state.html">www.smallbiz-enviroweb.org/state.html</a> | <i>List of State Contacts</i>                   |
| ➡ <a href="http://www.epa.gov/ttn/sbap">www.epa.gov/ttn/sbap</a>                                   | <i>Small Business Assistance Programs</i>       |
| ➡ <a href="http://www.epa.gov/oeca/polguid/index.html">www.epa.gov/oeca/polguid/index.html</a>     | <i>Enforcement Policy and Guidance</i>          |
| ➡ <a href="http://www.epa.gov/oeca/smbusi.html">www.epa.gov/oeca/smbusi.html</a>                   | <i>Small Business Policy</i>                    |
| ➡ <a href="http://www.epa.gov/oeca/oc">www.epa.gov/oeca/oc</a>                                     | <i>Compliance Assistance Home Page</i>          |
| ➡ <a href="http://www.epa.gov/oeca/ccsmd/commpull.html">www.epa.gov/oeca/ccsmd/commpull.html</a>   | <i>Small Businesses and Commercial Services</i> |
| ➡ <a href="http://www.epa.gov/oeca/ccsmd/mun.html">www.epa.gov/oeca/ccsmd/mun.html</a>             | <i>Small Communities Policy</i>                 |

#### Hotlines

EPA sponsors approximately 89 hotlines and clearinghouses that provide a free and convenient avenues to obtain assistance with environmental requirements. The Small Business Ombudsman Hotline can provide you with a list of all the hot lines and assist you with determining which hotline will best meet your needs. Key hotlines that may be of interest to you include:

|   |                |
|---|----------------|
| ➡ Small Business Ombudsman.....                   | (800) 368-5888 |
| ➡ RCRA/UST/CERCLA Hotline.....                    | (800) 424-9346 |
| ➡ Toxics Substances and Asbestos Information..... | (202) 554-1404 |
| ➡ Safe Drinking Water.....                        | (800) 426-4791 |
| ➡ Stratospheric Ozone/CFC Information.....        | (800) 296-1996 |
| ➡ Clean Air Technical Center.....                 | (919) 541-0800 |
| ➡ Wetlands Hotline.....                           | (800) 832-7828 |

#### Compliance Assistance Centers

EPA has established national compliance assistance centers, in partnership with industry, academic institutions, and other federal and state agencies, that provide on line and fax back assistance services in the following sectors heavily populated with small businesses:

- ➡ Metal Finishing ([www.nmfrc.org](http://www.nmfrc.org))
- ➡ Printing (1-888-USPNEAC or [www.pneac.org](http://www.pneac.org))
- ➡ Automotive (1-888-GRN-LINK or [www.ccar-greenlink.org](http://www.ccar-greenlink.org))

- ➡ Agriculture (1-888-663-2155 or [www.epa.gov/oeca/ag](http://www.epa.gov/oeca/ag))
- ➡ Printed Wiring Board Manufacturing ([www.pwbr.org](http://www.pwbr.org))
- ➡ The Chemical Industry (Contact: Emily Chow 202-564-7071)
- ➡ The Transportation Industry (<http://www.transource.org>)
- ➡ The Paints and Coatings Center (Contact: Scott Throwe 202-564-7013)
- ➡ Local Governments (Contact: John Dombrowski, 202-564-7036)

#### State Agencies

Many state agencies have established compliance assistance programs that provide on- site as well as other types of assistance. Please contact your local state environmental agency for more information. EPA's Small Business Ombudsman can provide you with State Agency contacts by calling (800)-368-5888.

#### Compliance Incentive Policies

EPA's Small Business Policy and Small Communities Policy are intended to promote environmental compliance among small businesses by providing incentives such as penalty waivers and reductions for participation in compliance assistance programs, and encouraging voluntary disclosure and prompt correction of violations. These policies can not be applied to an enforcement action such as this one that has already been initiated, but are noted for future reference. Contact Karin Leff (202-564-7068) for information on the Small Business Policy and Ken Harmon (202-564-7049) for information on the Small Communities Policy.

In order to improve your understanding of and compliance with environmental regulations and avoid the need for future enforcement actions, we encourage you to take advantage of these tools. ***However, please note that any decision to seek compliance assistance at this time does not relieve you of your obligation to answer EPA's administrative complaint in a timely manner, does not create any new rights or defenses, and will not affect EPA's decision to pursue this enforcement action.***

The Small Business and Agriculture Regulatory Enforcement Ombudsman and ten Regional Fairness Boards were established to receive comments from small businesses about federal agency enforcement actions. The Ombudsman will annually rate each agency's responsiveness to small businesses. If you believe that you fall within the Small Business Administration's definition of a small business (based on your SIC designation, number of employees or annual receipts) and wish to comment on federal enforcement and compliance activities, call 1-888-REG-FAIR (1-888-734-3247). ***However, participation in this program does not relieve you of your obligation to respond to an EPA request, administrative or civil complaint or other enforcement action in a timely manner nor create any new rights or defenses under law. In order to preserve your legal rights, you must comply with all rules governing the administrative enforcement process. The ombudsman and fairness boards do not participate in the resolution of EPA's enforcement action.***

Dissemination of this information sheet does not constitute an admission or determination by EPA that your business, organization or governmental jurisdiction is a small entity as defined by SBREFA or related provisions nor does it create any new rights or defenses under law.

**CHEMICAL RECOVERY SYSTEMS**  
**UPDATED PRP ADDRESS LIST**  
**LAST UPDATED 2/14/02**

1. 3 M Corp.  
Attn.: Brian Davis  
P.O. Box 33428  
St. Paul, MN 55133-3428
2. Smith and Condemi Co., LPA  
Attn: Bruce Illes  
1801 East 9<sup>th</sup> Street, Suite 900  
Cleveland, OH 44114  
(re: Adams Automatic Inc.)
3. Black McCuskey Souers & Arbaugh  
Attn: Victor Marsh  
1000 United Bank Plaza  
220 Market Avenue South  
Canton, OH 44702-2116 (re: Adelphia)
4. Parker Hannifin  
Airborne Division  
Attn: Chris Burich  
6035 Parkland Blvd  
Cleveland, OH 44124-4141
5. KOA Speer Electronics  
f/k/a Airco Speer Electronics  
Bolivar Drive, PO Box 547  
Bradford PA 16701
6. Akron Rubber Company  
R. G. Jeter, Registered Agent  
147 Kenilworth Drive  
Akron, OH 44313
7. Allegheny Label Co.  
1224 Freedom Road  
Cranberry Township, PA 16066
8. Chemcentral  
f/k/a Allegheny Solvents & Chemical  
P.O. Box 730  
Bedford Park, IL 60499-0730
9. Foley and Lardner  
Attn: Tanya O'Neill  
777 E Wisconsin Ave.  
Milwaukee, WI 53202-5367  
(re: Allis Chalmers)
10. US Steel Corporation  
Attn: Miles Stipanovich  
600 Grant Street, Room 1500  
Pittsburgh, PA 15219-2800 (re:Alside)
11. American Colors, Inc.  
Attn: Jim Sayre  
1110 Edgewater Drive  
Sandusky, OH 44870
12. American Greetings Corp.  
Attn: Michelle Creger  
One American Road  
Cleveland, OH 44144-2938
13. American Marietta  
P.O. Box 11176  
Southport, NC 28461-1176
14. Ashland Chemical, Inc.  
Robin Lampkin-Isabel  
P.O. Box 2219  
Columbus, OH 43216 (re: Cleveland, OH)
15. Ashland Chemical, Inc.  
Robin Lampkin-Isabel  
P.O. Box 2219  
Columbus, OH 43216 (re: Freedom, PA)
16. Ashland Chemical, Inc.  
Robin Lampkin-Isabel  
P.O. Box 2219  
Columbus, OH 43216 (re: Dayton, OH)

17. Ashland Chemical, Inc.  
Robin Lampkin-Isabel  
P.O. Box 2219  
Columbus, OH 43216 (re: Akron, OH)
18. Astatic Corp.  
P.O. Box 120  
Conneaut, OH 44030
19. Auto & Industrial Finishes  
Attn: Kevin R. Kehoe  
9070 Marshall Road  
Cranberry Township, PA 16066
20. Squire, Sanders & Dempsey L.L.P.  
Attn: Douglas McWilliams  
4900 Key Tower  
127 Public Square  
Cleveland, OH 44114-1304 (re: Avery Label)
21. Thompson Hine  
Attn: Heidi Goldstein  
3900 Key Center  
127 Public Square  
Cleveland, OH 44114-1291 (re: BF Goodrich)
22. McGregor & Patterson  
Attn: J Russell McGregor  
105 Smithfield Street, Suite 200  
Pittsburgh, PA 15222  
(re: Ball/Ranbar/BBT)
23. Squires Sanders & Dempsey  
Attn: Vincent Atriano  
1300 Huntington Center  
41 South High Street  
Columbus, OH 43215 (re: Barr, Inc.)
24. Basic Packaging Machinery Corp.  
642 Sugar Lane  
Elyria, OH 44035
25. Walton Paint Company  
d/b/a Beaver Paint Company  
Attn: Joseph Walton  
108 Main Street  
Jamestown, PA 16134
26. Thompson Hine  
Attn: Andrew Kolesar  
312 Walnut Street, 14<sup>th</sup> floor  
Cincinnati, OH 45202-4029  
(re: Berenfield Steel Drum)
27. Black McCuskey Souers & Arbaugh  
Attn: Victor Marsh  
1000 United Bank Plaza  
220 Market Avenue South  
Canton, OH 44702-2116 (re: Bison)
28. Vorys, Sater, Seymour and Pease  
Attn: Joe Blasko  
52 East Gay Street  
Columbus, OH 43216-1008  
(re: Borden Chemical)
29. Borg Warner  
Attn: Stephanie Bransfield  
200 South Michigan Avenue  
Chicago, IL 60604
30. Lathrop & Gage  
Attn: Jonathan Haden  
2345 Grand Blvd., Ste 2800  
Kansas City, MO 64108-2612 (re: BFI)
31. Whyte, Hirschboeck & Dudek  
Attn: Jennifer Buzecky  
111 East Wisconsin Ave., Ste 2100  
Milwaukee, WI 53202 (re: Bucyrus Erie)
32. Bud Industries, Inc.  
Attn: Ravi Jain  
P.O. Box 998  
Willoughby, OH 44096



33. Aztec Peroxides, Inc.  
f/k/a Carmac Chemical  
555 Garden Street  
Elyria, OH 44035
34. CNA Holdings  
f/k/a Celanese Coatings  
Attn: Tema Macarro  
86 Morris Avenue  
Summit, NJ 07901
35. Checkmate Boats  
3691 State Route 4  
Bucyrus, OH 44820
36. McDermott, Will & Emery  
Attn: Louis Rundio, Jr.  
227 W. Monroe St.  
Chicago, IL 60606 (re: Chemcentral)
37. Doepken Keevican & Weiss, P.C.  
Attn: Terry L. Schnell  
58th Floor, USX Tower  
600 Grant Street  
Pittsburgh, PA 15219-2703 (re: Chemical Dist.)
38. Waste Management  
f/k/a Chem-Trol Pollution Control Services  
Attn: James Forney  
3970 Heritage Avenue  
Okemos, MI 48864
39. Chemtron Corp.  
Attn: Richard Timm  
35850 Schneider Ct.  
Avon, OH 44011
40. Howard & Howard  
Attn: Gary Peters  
39400 Woodward Avenue, Suite 101  
Bloomfield Hills, MI 48304-5151  
(Re: Chrysler Plastics)
41. DaimlerChrysler Corporation  
f/k/a Chrysler Plastic Products Co.  
Attn: Kathleen Hennessey, CIMS 485-13-62  
1000 Chrysler Drive  
Auburn Hills, MI 48236-2808
41. Ingersoll-Rand  
Attn: Donna McMahon  
200 Chestnut Ridge Road  
Woodcliff Lake, NJ 07677  
(re: Clark Equipment)
42. Clyde Paint & Supply Co.  
Gerald F. Thomas, Registered Agent  
301 Lisa Ann Drive  
Huron, OH 44839
43. Cytec Industries, Inc.  
Attn: Thomas Waldman  
Five Garret Mtn Plaza  
West Paterson, NJ 07424  
(re: Conap, Inc.)
44. Conneaut Leather, Inc.  
Attn: Howard Bartow  
4114 Carpenter Road  
Ashtabula, OH 44004
45. Dwyer, Kinburn, Hall & Golub  
Attn: Terrence Dwyer  
16 Furler Street  
Totowa, NJ 07511-0437  
(re: Continental Can/Kiewit)
46. Crown Cork & Seal  
f/k/a Continental Can  
Attn: William Gallagher  
One Crown Way  
Philadelphia, PA 19154
46. Cuyohoga Chemical Company  
Attn: Paul Moffat  
3470 West 140<sup>th</sup> Street  
Cleveland, OH 44111-2431

47. Thompson Hine  
Attn: Michael Cyphert  
3900 Key Center  
127 Public Square  
Cleveland, OH 44114-1291  
(re: DeSantis Coatings)
48. Baker & Hostetler, LLP  
Attn: Jason Perdion  
3200 National City Center  
1900 East 9<sup>th</sup> Street  
Cleveland, OH 44114-3485  
(re: Dorn Color)
49. Dow Corning Corporation  
Attn: Barbara Rather (#CO1242)  
2200 West Salzburg Road  
Midland, MI 48686-0994
50. E.I. duPont de Nemours  
f/k/a DuPont Chemical  
Attn: Barbara Gravely, D-7083  
1007 Market Street  
Wilmington, DE 19898
51. Duracote Corporation  
Attn: Gerald Donnelly  
350 North Diamond Street  
Ravenna, OH 44266-1209
52. Kovitz Shifrin & Waitzman  
Attn: Richard Hillsberg  
750 Lake Cook Road, Suite 350  
Buffalo Grove IL 60089 (re: Eagle Rubber)
- Alan Plotkin  
18 East 48<sup>th</sup> Street, Floor 18  
New York, NY 10017 (re: Eagle Rubber)
53. Eastman Kodak  
Attn: Elliott Stern  
343 State Street  
Rochester, NY 14650-0217
54. Centria  
f/k/a Elwin G. Smith  
1005 Beaver Grade Road  
Coraopolis, PA 15108
- AK Steel Corporation  
f/k/a Elwin G. Smith  
703 Curtis Street  
Middletown, OH 45043
55. Elyria Concrete Step Company  
Attn: Everett Goad  
8015 North Murray Ridge Road  
Elyria, OH 44035
56. Elyria Foundry  
Attn: Samuel Knezevic  
120 Filbert Street  
Elyria, OH 44036
- Chromalloy American Corp.  
f/k/a Elyria Foundry  
120 S Central Ave.  
St Louis, MO 63105
57. Dow Chemical Co.  
f/k/a Essex Chemical-Jamestown Finishes  
Attn: Tracy Goad Walter  
2030 Dow Center  
Midland, MI 48676
58. FBC Chemical Corporation  
Attn: Lad Hudac  
P.O. Box 599  
Mars, PA 16046
59. Squire, Sanders & Dempsey L.L.P  
Attn: Douglas McWilliams  
4900 Key Tower  
127 Public Square  
Cleveland, OH 44114-1304 (re: Avery/Fasson)
60. Joondeph & Bittel  
Attn: Dale Wilson  
50 South Main Street, Suite 700  
Akron, OH 44308 (re: Ferriot Bros)

61. Hanna, Campbell & Powell  
Attn: David Moss  
3737 Embassy Parkway  
P.O. Box 5521  
Akron, OH 44334 (re: Firestone)
- Jones, Day, Reavis & Pogue  
Attn: Heidi Hughes Bumpers  
901 Lakeside Ave.  
Cleveland, OH 44114-1190 (re: Firestone)
62. Mattel, Inc.  
f/k/a Fisher Price Toys  
Attn: Gregg Clark  
333 Continental Blvd.  
El Segundo, CA 90245-5012
- Morrison & Foerster  
Attn: Peter Hsiao  
555 West Fifth Street  
Los Angeles, CA 90013 (re: Fisher Price Toys)
63. Ford Motor Company  
Attn: Kathy Hofer  
Parklane Towers West Ste 1500  
Three Parklane Blvd.  
Dearborn, MI 48126-2568
64. Foseco, Inc.  
Attn: Frank Simcic  
20200 Sheldon Road  
Cleveland, OH 44142 (re: Brookpark)
65. Foseco, Inc.  
Attn: Frank Simcic  
20200 Sheldon Road  
Cleveland, OH 44142 (re: Conneaut)
66. Vorys, Sater, Seymour and Pease  
Attn: Martyn Brodnik  
52 East Gay Street  
P.O. Box 1008  
Columbus, OH 43216-1008  
(re: Franklin Int'l/Glue)
67. General Electric Company  
Attn: Michael Elder  
320 Great Oaks Office Park, Ste. 323  
Albany, NY 12203
- Young Sommer LLC  
Attn: Dean Sommer  
Five Palisades Drive  
Albany, NY 12205  
(re: General Electric)
68. General Motors  
Attn: Linda Bentley (MC 482-C24-D24)  
300 Renaissance Center  
Detroit, MI 48243 (re: Lordstown)
69. Continental General Tire  
f/k/a General Tire  
1800 Continental Blvd.  
Charlotte, NC 28273
70. Glidden Co.  
Attn: Robert Kovalak  
925 Euclid Avenue, Suite 900  
Cleveland, OH 44115
71. Goodyear Tire & Rubber Co.  
Attn: Neal Rountree  
1144 E. Market Street  
Akron, OH 44316
72. Reale & Fossee  
Attn: C.S. Fossee  
625 Stanwix Street, Ste 2405  
Pittsburgh, PA 15222 (re: Gordon Terminal)
73. GLS Corporation  
Attn: Nancy Dehmlow (Great Lakes Terminal)  
P.O. Box 3208  
Arlington Heights, IL 60006-3208
74. Centria  
f/k/a H.H. Robertson  
1005 Beaver Grade Road  
Coraopolis, PA 15108

McDermott, Will & Emery  
Attn: Colleen E. Baime  
227 West Monroe  
Chicago, IL 60606  
(Re: Heico/HH Robertson)

75. Goldberg, Stinnett, Meyers & Davis  
Attn: Katherine Ray  
44 Montgomery St., Ste 2900  
San Francisco, CA 94104 (re: Hexcel)

Hexcel Corporation  
Attn: A. William Nosil  
11711 Dublin Boulevard  
Dublin, CA 94568

David B. Graham  
Baker & Hostetler LLP  
1900 East 9th Street  
Cleveland, OH 44114-3485  
(re: Hexcel)

76. ITW Food Equipment  
Attn: Steve Adams  
701 S Ridge Avenue  
Troy, OH 45374 (re: Hobart/Grove City)

77. ITW Food Equipment  
Attn: Steve Adams  
701 S Ridge Avenue  
Troy, OH 45374 (re: Hobart/Dayton)

78. Black McCuskey Souers & Arbaugh  
Attn: Victor Marsh  
1000 United Bank Plaza  
220 Market Avenue South  
Canton, OH 44702-2166  
(re: Hoover Company)

79. Calfee, Halter & Griswold LLP  
Attn: Susan Strom  
1400 McDonald Investment Center  
800 Superior Avenue  
Cleveland, OH 44114-2688 (re: Hukill)

80. Henkel Corporation  
f/k/a Dexter Corp./Dexter-Hysol  
Attn: Kevin Chu  
2200 Renaissance Blvd.  
Gulph Mills, PA 19406

Kenneth Arnold  
49 Valley Drive-Suite 200  
Furlong, PA 18925 (re: Henkel/Dexter)

Akzo Nobel Inc.  
Attn: Brian Curtis  
300 South Riverside Plaza, Suite 2200  
Chicago, IL 60606 (re: Dexter Corp.)

81. Industrial Chemical Corp.  
f/k/a Industrial Alkali  
885 W Smith Rd.  
Medina, OH 44256

82. J. C. Whitlam Manufacturing Co.  
Attn: Steve Carey  
P.O. Box 380  
Wadsworth, OH 44282-0380

83. Jamestown Paint & Varnish Co.  
Attn: Joseph Walton  
108 Main Street  
Jamestown, PA 16134

84. Duramax, Inc.  
f/k/a Johnson Plastics  
16025 Johnson Street  
Middlefield, OH 44062

85. Kalcor Coatings Co.  
Attn: Newton Zucker  
37721 Stevens Blvd.  
Willoughby, OH 44094

86. Foley, Hoag & Eliot  
Attn: Monica Conyngham  
One Post Office Square  
Boston, MA 02109  
(Re: Kenner/Hasbro)

87. Shumaker, Loop & Kendrick  
Attn: Jeffrey Fort  
1000 Jackson  
Toledo, OH 43624  
(re: Lake Shore Industries)
88. Liberty Solvents & Chemical Co.  
Attn: Raymond Pasquali  
9429 Ravenna Road  
Twinsburg, OH 44087
89. BASF Corporation  
Attn: Harry Baumgartner  
3000 Continental Drive - North  
Mount Olive NJ 07828  
(re: BASF/Limbacher)
90. Jones, Day, Reavis & Pogue  
Attn: John Rego  
901 Lakeside Ave.  
Cleveland, OH 44114-1190  
(re: Lorain Products)
91. Babst, Calland, Clements & Zominir  
Attn: Michele Gutman  
Two Gateway Center  
Pittsburgh, PA 15222 (re: Luxaire)
- VIACOM Inc.  
Attn: Linda Kelley  
MC745  
11 Stanwix Street  
Pittsburgh, PA 15222-1384 (re: Luxaire)
92. Mahoning Paint Corporation  
653 James St.  
Youngstown, OH 44502
93. McMahon, DeGulis, Hoffman & Lombardi  
Attn: Gregory DeGulis  
812 Huron Road, Ste 650  
Canton, OH 44115-1126  
(re: Mameco International)
94. Marlite Division  
202 Harger Street  
Dover, OH 44622
95. Masonite Corporation  
One South Wacker Drive, Suite 3600  
Chicago, IL 60606
96. Miller Studio, Inc  
Attn: John Basiletti  
P.O. Box 997  
New Philadelphia, OH 44663
- Lundgren Goldthorpe & Zumbar  
Attn: Andrew Zumbar  
526 East Main Street  
Alliance, OH 44601-0595  
(re: Miller Studio)
97. Exxon Mobil  
Attn: J Kyle Harris  
601 Jefferson Room 1221  
Houston, TX 77002 (re: Mobil Chemical)
98. Warren and Young  
Attn: Stuart Cordell  
134 W 46th Street  
Ashtabula, OH 44005-2300  
(re: Molded Fiberglass)
99. National Acme  
170 E. 131st Street  
Cleveland, OH 44108
100. Rexam Beverage Can Americas  
f/k/a National Can  
8770 W Bryn Mawr, Floor 1  
Chicago, IL 60631
101. Neville Chemical Company  
Attn: Thomas McKnight  
2800 Neville Road  
Pittsburgh, PA 15225-1496

102. Nalwood Chemical  
8970 Hubbell Avenue  
Detroit, MI 48228
103. Nordson Corporation  
Attn: Robert Veillette  
28601 Clemens Road  
Westlake, OH 44145
104. Philip Services  
Attn: Michael Chimitris  
9700 Higgins Road, Suite 750  
Rosemont, IL 60018 (re: Nortru)
105. Day, Berry & Howard  
Attn: Tricia Haught  
CityPlace I  
Hartford, CT 06103-3499 (re: Ohio Brass)
106. Thomas Pannett  
Ohio Attorney General's Office  
140 East Troy St., 12<sup>th</sup> floor  
Columbus, OH 43215-4132 (re: Ohio DOT)
107. Yenkin Majestic Paint Corporation  
Ohio Polychemical Division  
Attn: Merom Brachman  
1920 Leonard Avenue  
Columbus, OH 43219
108. Thompson Hine  
Attn: Heidi Goldstein  
3900 Key Center  
127 Public Square  
Cleveland, OH 44114-1291  
(re: Owens Illinois)
109. P & K Oil Service, Inc.  
PO Box 22024  
Beachwood, OH 44122-0024
110. FirstEnergy  
Attn: Douglas Weber  
76 South Main St  
Akron, OH 44308  
(re: Painesville Nuc. Pwr)
111. Pfizer, Inc.  
f/k/a Parke-Davis & Company  
Attn: Michael McThomas  
235 E. 42<sup>nd</sup> St.  
New York, NY 10017
112. Plas-Tanks Industries, Inc.  
Attn: J. Kent Covey  
39 Standen Drive  
Hamilton, OH 45015
113. Valspar  
Attn: Ronda Bayer  
1101 S Third St.  
Minneapolis, MN 55415 (re: Plasti-Kote)
114. PPG Industries  
Attn: Paul King  
One PPG Place  
Pittsburgh, PA 15272 (re: Cleveland)
115. PPG Industries  
Attn: Paul King  
One PPG Place  
Pittsburgh, PA 15272 (re: Springdale PA)
116. PPG Industries  
Attn: Paul King  
One PPG Place  
Pittsburgh, PA 15272 (re: Circleville, OH)
117. Amer Cunningham Co.  
Attn: Michael S. Urban  
159 S. Main St.  
Akron, OH 44308-1322  
(re: Quality Synthetic Rubber)
118. Scott Fetzer Company  
f/k/a Quikut  
Attn: Patricia Scanlon  
28800 Clemens Road  
Westlake, OH 44145-1197

- Jones, Day, Reavis & Pogue  
Attn: Thomas Hamilton  
901 Lakeside Avenue  
Cleveland, OH 44114-1190 (re: Quikut)
119. R. W. Beckett Corp.  
Attn: Donald Brackenhoff  
P.O. Box 1289  
Elyria, OH 44036-1289
120. LTV Steel  
f/k/a Republic Steel  
Attn: T.A. Zalenski  
200 Public Square  
Cleveland, OH 44114-2308
121. Babst, Calland, Clements, Zomnir  
Attn: Kevin Garber  
2 Gateway Center  
Pittsburgh, PA 15222 (re: Rexroth)
122. Ross Incineration Services, Inc.  
f/k/a Robert Ross & Son's, Inc.  
36790 Giles Rd.  
Grafton, OH 44044
- Wickens, Herzer, Panza Cook & Batista  
Attn: Richard Panza  
1144 West Erie Avenue  
Lorain OH 44052  
(re: Robert Ross & Sons)
123. Rockwell International  
Attn: Gary Ballesteros  
777 E Wisconsin Ave., Ste 1400  
Milwaukee, WI 53202
124. Shell Oil Company  
Attn: Mary Smith, Room 4881 OSP  
P.O. Box 2463  
Houston, TX 77252-2463
125. Sherwin Williams Co.  
Attn: Allen Danzig  
101 Prospect Avenue NW  
Cleveland, OH 44115-1075 (re: Mayfield Village)
126. Sherwin Williams Co.  
Attn: Allen Danzig  
101 Prospect Avenue NW  
Cleveland, OH 44115-1075 (re: Cincinatti)
127. Honeywell  
f/k/a Sinclair & Valentine  
Attn: Heleen Schiller  
P.O. Box 2245  
Morristown, NJ 07962-2245
128. Sherwin Williams Co.  
Attn: Allen Danzig  
101 Prospect Avenue NW  
Cleveland, OH 44115-1075 (re: Sprayon)
129. Moen  
f/k/a Stanadyne, Inc  
Attn: Dennis McKinney  
25300 Al Moen Drive  
North Olmsted, OH 44070-8022
130. LeBoeuf, Lamb, Greene & McRae  
Attn: Patricia Shaw  
One Gateway Center  
420 Fort Duquesne Blvd., Ste 1600  
Pittsburgh, PA 15222-1437 (re: Stolle Corp.)
131. LeBoeuf, Lamb, Greene & McRae  
Attn: Patricia Shaw  
One Gateway Center  
420 Fort Duquesne Blvd., Ste 1600  
Pittsburgh, PA 15222-1437 (re: Stolle Prod.)
132. Superior Screw  
P.O. Box 92046  
Elk Grove, IL 60009
133. Vorys, Sater, Seymour and Pease  
Attn: Scott Doran  
52 East Gay Street  
Columbus, OH 43216-1008 (re: Taylor Metals)

148. Whirlpool Corp. - Clyde Division  
Attn: Larry Yinger  
2000 N M-63  
Benton Harbor, MI 49022-2692
149. Whirlpool Corp. - Findlay Division  
Attn: Larry Yinger  
2000 N M-63  
Benton Harbor, MI 49022-2692
150. Buckingham, Doolittle & Burroughs  
Attn: Ralph Amiet  
50 S Main Street  
Akron, OH 44309-1500 (re: Wooster Brush)
151. Yenkin Majestic Paint Corporation  
Attn: Merom Brachman  
1920 Leonard Avenue  
Columbus, OH 43219



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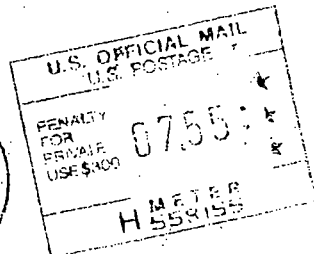
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Tommy Armour Golf  
8350 N. Lehigh Avenue  
Morton Grove, IL 92008

ML  
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1st NOTICE 5-27-02  
2nd NOTICE 4-7-02  
RETURNS

**Administrative Order on Consent Under Section 122(g)(1)(A) of CERCLA for the  
Chemical Recovery Systems Site, Elyria, Ohio Docket No. V-W-03-C-750  
Response to Comments**

Chemical Recovery Systems Site  
Elyria, Ohio

**RESPONSE to COMMENTS**

On August 20, 2003, the United States Environmental Protection Agency (U.S. EPA) published a notice in the Federal Register, giving notice in accordance with Section 122(i) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended ("CERCLA"), 42 U.S.C. 9622(i), of a proposed administrative settlement for recovery of response costs concerning the Chemical Recovery Systems Superfund Site in Elyria, Ohio. That notice requested public comments be provided to the Agency in written form by September 19, 2003. The notice further stated that the Agency will consider all comments received and may modify or withdraw its consent to the settlements if comments received disclose facts or considerations which indicate that the settlements are inappropriate, improper, or inadequate.

The Agency has received two sets of written comments on the proposed settlement. This responsiveness summary has been prepared to address those comments.

**BACKGROUND**

**Site Location and Description**

The Chemical Recovery Systems Superfund Site ("Site" or "CRS Site") is approximately 2.3 acres in size, and it is located at 142 Locust Street in a predominantly commercial/industrial area in the city of Elyria, in Lorain County, Ohio. The Site occupies a part of a peninsula jutting into the Black River.

The western boundary of the Site runs along the bank of the East Branch of the Black River ("River"); the northern boundary of the Site adjoins property owned by the Englehard Chemical Company; the eastern boundary runs along Locust Street, with Englehard Chemical Company on the other side of that street, and the Site's southern boundary adjoins the property of M&M Aluminum Siding.

From 1960 through 1974, Russell Obitts formed and operated two companies, Obitts Chemical Services and Obitts Chemical Company, both of which conducted operations at the Site. The former operated as a solvent reclamation facility, the latter sold solvents to industry. Obitts obtained "scrap" or "spent" organic solvents from various companies. After distilling away the impurities in the "dirty" solvents, the "cleaned" reclaimed solvents were repackaged and sold. The solvents were transported to and from the Site in 55-gallon drums or by tanker trucks. Mrs.

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Obitts has stated that when her husband began the business, its principal customer and the primary source of spent solvent sent to the Site was Sherwin-Williams.

In 1974, Chemical Recovery Systems (CRS) assumed operation of the Site through a stock purchase agreement with the Obitts Chemical Company. In a separate agreement, CRS leased the lots on the peninsula west of Locust Street from Dorothy Obitts, with an option to purchase. Later, CRS exercised its purchase option. Still later, CRS defaulted on payment for the property, and Dorothy Obitts re-assumed uncontested ownership following a legal action.

The Site is currently owned by an Obitts family trust. The Site is presently leased and used for storage purposes by M&M Aluminum Siding. The Site is fenced in on all sides except for the side bordering the River, which is overgrown by heavy vegetation. All tanks, drums, trucks and other equipment related to solvent reclamation operations were removed from the Site over twenty years ago. At that time some surface soil was removed and graded, as well.

The contamination at this Site results primarily from solvent reclamation activities conducted at the Site from 1960 until 1981. Investigations of the Site undertaken by U.S. EPA under CERCLA between 1982 and 1995 have shown that the subsurface soil and groundwater at the Site was contaminated, primarily by volatile organic chemicals, presumably related to spills and leaks from the solvent reclamation activities that took place on the Site over a period of two decades, between 1960 and 1981. According to these studies, groundwater flow direction is toward the river. Studies have indicated little or no potential for exposure to contaminated groundwater migrating from the Site.

**Enforcement History at the Site**

The CRS Site has been the subject of U.S. EPA actions for over twenty years, beginning with a RCRA 7003 action in 1981<sup>1</sup>, and subsequent studies under CERCLA conducted between 1982 and 1995. The CRS Site is a "non-NPL equivalent" Site. This term refers to a category of sites which have not been nominated for the National Priority List (NPL), although the Agency and the State believe that information gathered about the Site and expressed in the Site's pre-score indicates it would merit ranking on the NPL if it were nominated. The Agency is experimenting with a new approach for this category of sites, giving potentially responsible parties (PRPs) an opportunity to initiate study and cleanup activities without the Agency first formally listing the

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<sup>1</sup> A Consent Decree resolving this action required the removal from the Site of all tanks, drums and vessels associated with the solvent reclamation company's operations and also required the removal of the top layer of surficial soil.

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Site on the NPL. The Agency hopes this new approach will expedite response actions and believes it may also reduce transaction costs for PRPs and for the Agency.

A Potentially Responsible Party (PRP) search begun in March 1999, developed substantial information regarding potentially responsible parties at the Site. U.S. EPA investigators located a corporate officer of Chemical Recovery Systems, Inc., (CRS) a Michigan corporation. Interviews with this individual and other former employees of CRS and subsequent information requests led to the discovery, in 2000, of a substantial quantity of CRS company records giving details of solvent reclamation operations conducted at the Site.

The investigators also located a number of additional witnesses who had been employed by the Site operators over the approximately twenty year period of solvent reclamation activities at the Site. Additional witnesses were interviewed and summaries of a large number of these interviews have been shared with the PRPs upon request.

A general notice letter dated March 2, 2001, was sent to all potentially responsible parties who had been identified by the Agency at that time.<sup>2</sup> U.S. EPA continued (and still continues to this day) to search for additional PRPs who may be liable for costs incurred at this Site. Several additional major parties have been found this year, and will soon be formally identified as PRPs.

An Itemized Cost Summary (ICS) showed \$408,000 in past costs incurred and not reimbursed as of March 31, 2001. U.S. EPA next issued a Special Notice letter, pursuant to Section 121 of the Comprehensive Environmental Response Compensation and Liability Act (CERCLA), for RI/FS negotiations for this Site on June 27, 2001.

**Negotiations for an RI/FS Order**

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<sup>2</sup> That general notice was sent to 129 "PRPs" identified by the Agency at that time. The number of PRPs on the PRP list has fluctuated since then for several reasons. U.S. EPA has added new parties as PRPs as and when it was able to find viable successors to companies which had evidently sent spent solvent to the Site according to the CRS records. U.S. EPA has also dropped a few companies from the list when and if those companies have been able to demonstrate, by presenting new and persuasive evidence, that they were probably not potentially liable at this Site. Originally, U.S. EPA sent multiple notices to separate plants or divisions belonging to the same corporation, so the original PRP list contained multiple entries for PPG, Sherwin-Williams, Ashland, Avery Dennison and others. There were 142 company names on the PRP list at the time of Special Notice on June 27, 2001. At this time, on September 25, 2003, there are 133 PRPs identified on the PRP list for this Site. U.S. EPA proposes to conclude a *de minimis* settlement with 83 of these companies.

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Copies of a draft Administrative Order on Consent (AOC or Order) and a draft Statement of Work (SOW) were enclosed with the Special Notice letter. That Notice went to all of the 142 potentially responsible parties who had been identified by the Agency at that time by general notice letters. The Notice made demand for the \$408,000 in past costs and invited all PRPs to undertake RI/FS activities at the Site pursuant to an AOC.

U.S. EPA attended a meeting sponsored by some of the PRPs in May 2001, in Cleveland, to discuss the Site. U.S. EPA held its own meeting in Chicago on June 26, 2001, inviting all PRPs in an effort to stimulate the formation of a Steering Committee. Approximately two dozen of the largest PRP companies did form a Steering Committee in July and submitted a letter, offering to negotiate a good faith proposal, on August 24, 2001.

That letter proposed a meeting in September and offered to provide a "markup" of the AOC for RI/FS and SOW at some unspecified future time. The Steering Committee met with U.S. EPA on September 10, 2001.

Since that meeting, U.S. EPA provided these PRPs with a great deal of information about the Site, including State files, U.S. EPA files, 104(e) responses and the relevant records kept by the CRS company regarding Site operations.

U.S. EPA and these PRPs exchanged draft revised versions of the AOC for RI/FS and the SOW. These PRPs asked Agency personnel to come to Cleveland for a meeting to discuss the AOC and SOW. They indicated that they could not hold such a meeting any earlier than March 6, 2002. Agency representatives agreed to come to Cleveland and meet on that date.

At that meeting, these PRPs argued that the Agency should include language in the Order for RI/FS, promising to seek reimbursement from other PRPs at the Site (who did not sign the Order for RI/FS) before pursuing the "Performing Parties" (those who signed an Order to perform the RI/FS, sometimes referred to hereinafter as the Group) for any costs other than oversight costs incurred by U.S. EPA. On EPA's rejection of this proposal, the PRPs suggested that the performing parties be forgiven the \$408,000 demanded (with the Agency to pursue the other parties--more than a hundred PRPs who did not sign the Order for RI/FS-- by *de minimis* settlements and other cost recovery mechanisms). The Agency rejected this proposal as well, being unwilling to compromise the principle of joint and several liability by "forgiving" past costs to this Group while promising to pursue other parties for those costs.

On Wednesday, May 29, 2002, the Superfund Division Director for the United States Environmental Protection Agency ("Agency"), Region 5, William E. Muno, issued an Administrative Order on Consent ("Order") signed by 24 potentially responsible parties (PRPs).

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Under the Order, these PRPs (the Group) will conduct a remedial investigation and feasibility study (RI/FS) for the Chemical Recovery Systems Site (CRS Site) in Elyria, Ohio.

The Administrative Order for RI/FS required the Respondents to pay U.S. EPA's oversight costs on an annual basis, but the Order was silent on the issue of payment of past and future costs. The Agency has retained its right to pursue any PRP for such costs, but it has assured the 24 Respondents of the AOC for RI/FS that it will seek to recover some of the Agency's costs from *de minimis* parties. U.S. EPA has also stated its intention to set up a special account for money paid in a *de minimis* settlement. The funds in that account are to be spent at this Site, or to reimburse the Fund for past costs incurred at this Site.

**Development of a Volumetric Ranking**

When the AOC for RI/FS was signed, U.S. EPA returned its attention to the development of a strategy for preparing a volumetric ranking of spent solvent sent to the Site by PRPs, based on the available documentary evidence acquired by the Agency in the course of its investigations and supported by the statements of witnesses interviewed. During the previous year, the Agency had already tasked its PRP Search Contractor, TechLaw Inc., (TechLaw), to begin work on this project by digitizing the available documentary information from the CRS records and Section 104(e) responses and preparing a Waste-In list. The Waste-In list and Volumetric Ranking were prepared in accordance with all relevant U.S. EPA guidance.<sup>3</sup>

As noted above, U.S. EPA investigators had located a corporate officer of Chemical Recovery Systems, Inc., a Michigan corporation (CRS Michigan). This individual had played a leading role in setting up the CRS Michigan company as a solvent reclamation facility,<sup>4</sup> and he had also played a leading role in setting up the Chemical Recovery Systems, Inc., facility in Elyria, Ohio as a wholly owned subsidiary of the Michigan company. The CRS facility in Elyria bought out the Obitts operation and continued the solvent reclamation activities at the Site.

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<sup>3</sup> See Final Guidance on Preparing Waste-In Lists and Volumetric Rankings Under CERCLA, OSWER Directive 9835.16, February 22, 1991. U.S. EPA 1991.

<sup>4</sup> CRS Michigan operated a solvent reclamation facility in Romulus, Michigan. This corporate entity set up a wholly owned subsidiary, Chemical Recovery Systems of Ohio, to take over the Elyria, Ohio operations at the Site and run the solvent reclamation business set up at that Site by Russell Obitts. Mr. Obitts was apparently retained by CRS Ohio for several years as a consultant. CRS Ohio continued to service the customer base Mr. Obitts had developed.

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As noted previously, the CRS corporate officer provided a substantial quantity of CRS company records giving details of Site operations. These records included a number of documents that were useful in determining quantities of spent solvent sent to the Site by various companies. The records covered the span of CRS operations (1974-1981) and the latter years of that period appeared to be more thoroughly documented than the early years. Some records were included regarding the period of operation under Mr. Obitts, but this period (1960-1974) appears to be documented only sparsely in the surviving records. The records and the witnesses together attest that the CRS facility continued to service the Obitts customer list, although new customers were also added over time.

U.S. EPA had all the CRS company records relevant to liability at the Site scanned into the Superfund Document Management System Database, along with other Site records. A compact disk was burned for distribution to the PRPs at this Site so that all PRPs had access to the CRS company records. The Group made a special request that U.S. EPA prepare hard copies of the CRS company records for the Group's benefit, as well as the CD of the scanned record. U.S. EPA gave the Group all the CRS company records in paper form as well as on CD.

The documents found in the CRS company records included a series of typewritten sheets labeled as "Dirty Inventory." Entries on these sheets gave a record of shipments from 1974-1981. These records gave details for individual shipments of spent solvents to the Site, including the name of the company that sent the shipment, the quantity, expressed as a number of drums or gallons or pounds, in each shipment recorded therein, the date the shipment arrived and a brief description of the chemical (e.g., "scrap thinner," "mask wash" or "dirty solvent"). Sometimes the description gave a specific chemical name (e.g., "trichlor" or "methylene chloride").

The records also included a set of accounting ledgers which gave the accounts receivable and accounts payable (primarily for the period from 1974-1981). Line items in these ledgers offered strong evidence of whether the transaction involved a shipment of scrap solvent to the Site. For example, the Accounts Receivable ledgers contained line items for "sludge disposal" associated with records of payments from some customers, while the Accounts Payable ledgers showed line items for the purchase of "scrap solvent for reclamation" associated with records of payments to some customers (e.g., Sherwin-Williams, PPG and Avery Dennison).

Witness testimony indicated that the Site operators obtained scrap solvent in two ways. In some cases CRS was paid by the company that supplied the scrap solvent for the service of hauling it away from the customer to CRS. In other cases, CRS paid money to the company that supplied the scrap solvent which was hauled to CRS. The economics of the solvent reclamation business evidently made this profitable in certain circumstances. The witnesses all agree that all spent solvent sent to the Site from 1960-1981 was hauled in trucks owned and maintained by Obitts or



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CRS, and this fleet of tankers and other trucks were driven by Obitts and CRS employees, many of whom have been interviewed by U.S. EPA investigators.

This testimony combined with line items in the ledgers (e.g., a line item for "sludge disposal" in the accounts receivable records, or one for purchase of scrap solvent for reclamation in the accounts payable records) indicated that transactions in both accounts receivable and accounts payable records should be considered in developing a volumetric ranking for the Site.

In addition to the Site records provided by CRS, U.S. EPA had a number of admissions regarding scrap solvent sent to the Site, provided in the responses to Section 104(e) information requests sent under CERCLA.

Thus, the Waste-In list prepared by TechLaw for U.S. EPA was based on the accounting records kept by CRS, the "Dirty Inventory" lists kept by CRS, and the 104(e) responses submitted by PRPs. The witness statements were checked against the records for consistency and also used to support a determination from the records that the company in question had sent spent solvent to the Site, but witness statements regarding quantity and/or frequency of such shipments were not used as an independent basis for attributing additional quantity of spent solvent sent (waste-in) to individual PRPs<sup>5</sup>.

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<sup>5</sup> However, once the volumetric ranking was essentially complete and revised to its current form, before making a final determination that a party should be considered a *de minimis* contributor, U.S. EPA examined all the witness statements to find out whether a company that seemed to be *de minimis* based on the CRS company records had nevertheless been identified by multiple witnesses as a large, frequent, regular contributor of spent solvent to the Site over a significant period of time. The Agency used witness testimony in this instance to supplement the CRS company records because (1) the records provided by the CRS company did not adequately document the early part of the Site's history of operations, (2) the employment periods of the witnesses interviewed did cover part of the Site's history of operations which was not well documented by the CRS company records, and (3) U.S. EPA wished to avoid, as much as possible, unfairly offering *de minimis* settlements to large contributors simply because their transactions with the Site were not captured in the remaining CRS company records. Witness testimony of large, frequent, regular contributions of spent solvent to the Site over a significant period of time resulted in an Agency decision **not** to extend *de minimis* offers to five large companies (most of them members of the Group) because witness testimony provided convincing evidence that these parties had sent far more spent solvent to the Site than the available, remaining CRS company records indicated. According to witness testimony, each of these five companies appeared to have sent such large, frequent, regular contributions of spent solvent to the Site over a significant period of time that none of them could fairly be considered

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The PRPs were all kept informed of this ongoing project and were given an opportunity to comment on the process by which U.S. EPA and TechLaw elected to proceed. On September 28, 2001, U.S. EPA mailed to all PRPs a document explaining the process by which the volumetric ranking would be developed from the information available regarding shipments of spent solvent to the Site. U.S. EPA invited comments from all PRPs on the proposed process for developing the Volumetric Ranking, and were informed that U.S. EPA intended to use the Volumetric Ranking, when it was completed, as a basis for proposing *de minimis* settlements. A number of comments were received. U.S. EPA prepared a Responsiveness Summary which was mailed to all PRPs, responding to all significant comments received during the period established for comment, and indicating revisions in the proposed approach to developing the Volumetric Ranking.

Based on the Waste-In list, TechLaw developed a volumetric ranking to indicate relative quantities of spent solvent sent to the Site by generator companies, based on the available records. This volumetric ranking allowed the Agency to attribute relative percentages of total volumes sent to the Site to individual PRPs. This knowledge was essential to the development of *de minimis* settlement offers.

**Development of De Minimis Offers**

U.S. EPA guidance documents provide direction to Agency employees on the methods to follow in developing *de minimis* settlement offers.<sup>6</sup> The guidances indicate that the *de minimis* settlement offer may be derived by multiplying the percentage of total waste volume contribution to the Site attributed to an individual PRP by the past costs and adding that number to a second figure derived by multiplying the percentage of waste volume contribution attributed to a PRP by the estimated future costs of investigating and cleaning up the Site. These two numbers (past costs times percentage of waste volume contributed plus estimated future costs times percentage of waste volume contributed) are added together to produce the baseline amount and a premium (from 50% to 100% of future costs, depending on the presence or absence of a re-opener provision for future costs) is added to the combined total. The premium is added to cover uncertainties associated with unknown contingencies regarding future costs.

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as *de minimis* or offered an opportunity to participate in this settlement without manifest unfairness to other parties.

<sup>6</sup> See, e.g., "Standardizing the De Minimis Premium," U.S. EPA, July 7, 1995. See also "Streamlined Approach for Settlements with De Minimis Waste Contributors under CERCLA Section 122(g)(1)(A)" U.S. EPA, July 30, 1993.

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An Itemized Cost Summary dated June 30, 2002, shows the past costs at this Site totaled \$772,427.19 at that time. The U.S. EPA Remedial Project Manager (RPM), based on cost estimates provided by a U.S. EPA contractor (TetraTech) and supported also by personal knowledge of the Site as revealed by previous investigations, made a reasonable estimate of anticipated future costs likely to be incurred by the PRPs to complete the RI/FS, and has also estimated the likely range of contractor costs for oversight of the PRP-led RI/FS (including sampling and analytical costs). Allowing for other costs likely to be incurred by U.S. EPA and its contractors as efforts continue on cost recovery and associated negotiations, the Agency estimated total future costs through the conclusion of the RI/FS and the issuance of a Record of Decision for the Site as between \$400,000 and \$750,000.

Estimated future costs for implementing the Record of Decision are relatively low. This is primarily because the Site is relatively small (2.3 acres), and there is evidence in the record that migration of contaminated groundwater will probably not be a cognizable factor in any risk assessment (the Site is on a peninsula with the Black River down gradient; previous investigations revealed no actual or potential receptors).

Furthermore, the Site, like the surrounding neighborhood, seems most likely to continue to be used for industrial storage purposes. The Site has most recently been used to store junk cars and used aluminum for recycling; the next door neighbor is a chemical manufacturing company which occupies most of the peninsula already. No residential receptors, current or potential, have been found. The RPM has estimated \$200,000 to \$300,000 for post-ROD cleanup costs. Even when other costs (oversight, operation and maintenance, continuing efforts to recover costs, negotiations, etc.) are factored in, estimated future costs post-ROD are likely to range no higher than \$375,000 to \$750,000. These estimates produce a range of future cost estimates running from a low end of \$775,000 to an upper boundary of \$1,500,000. The proposed settlements are based on the upper end of this range to produce a conservative figure.

The guidance on standardizing the *de minimis* premium draws a balance between two factors. Premiums may run between a range of 50%-100% based on uncertainties regarding future costs and an incentive for early settlement.<sup>7</sup> U.S. EPA has proposed this early *de minimis* settlement based on a full 100% premium for the future costs component of the baseline amount (without reopener), added to the baseline amount calculated as described above. The 100% premium is appropriate because the RI/FS field work has only recently begun. This is consistent with the July 7, 1995 Guidance on Standardizing the De Minimis Premium.<sup>8</sup>

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<sup>7</sup> See "Standardizing the De Minimis Premium," U.S. EPA, July 7, 1995.

<sup>8</sup> *Ibid*

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The guidance states that in certain site-specific circumstances, it may be advisable to seek to recover a premium for past costs as well as future costs.<sup>9</sup> At this Site relatively substantial past costs already exist. Therefore, U.S. EPA decided to impose a 100% premium for past costs as well as future costs in this initial round of early *de minimis* settlements.

**COMMENTS and RESPONSES**

**Comments Provided by the PRP Group**

The CRS Site PRP Group (the Group), PRPs who signed the Administrative Order on Consent for RI/FS which U.S. EPA signed and issued on May 29, 2002, who style themselves as the "Performing Parties," have offered comments on the proposed administrative settlement for recovery of response costs concerning the Chemical Recovery Systems Superfund Site in Elyria, Ohio. The Group is made up of large companies which contributed large volumes of spent solvent to the Site. The Group objects to the proposed settlement, alleging that it is "inappropriate" and "inadequate." The Group argues that it is "inappropriate" because it is too soon to be certain what total Site costs will be, and "inadequate" because it does not ask parties which sent relatively small quantities of spent solvent to the Site to pay much larger sums to cash out early. The Group believes that the proposed settlement might result in members of the Group being asked some day to pay more than what they feel is their "fair share" at this Site, if in fact their fears that total Site costs may be much greater than U.S. EPA's estimate turn out to be well founded.

U.S. EPA believes that the proposed settlement is appropriate. The proposed settlement will cash out 83 PRPs, who collectively sent what appears to be, at most, 15% of the total volume of spent solvent sent to the Site, for \$651,200.<sup>10</sup> Settling with these PRPs now will result in substantial savings for all parties involved at the Site by significantly reducing future transaction costs. U.S. EPA also believes the proposed settlement is substantial, and most certainly "adequate." The primary objection stated by the Group is that U.S. EPA may have significantly underestimated future Site costs. U.S. EPA does not believe that this is the case, but in any event, U.S. EPA has imposed a very substantial premium on those parties joining in the proposed settlement to guard against unforeseen contingencies.

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<sup>9</sup> *Ibid* at Footnote 5.

<sup>10</sup> There are now 133 parties identified as PRPs at the Site. Even after the 83 *de minimis* parties have cashed out, 50 parties will remain jointly and severally responsible for the costs incurred at the Site which have not been reimbursed.

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**Comment:** The Group has organized its comments under two principal headings. The first set of comments and objections are headed: "Total Site costs remain speculative." The Group claims that this must be the case, because field work on the RI/FS has only just begun; therefore, the Agency must (the Group argues) lack "a sufficient basis to form a reasoned opinion on what, if any, remedial action will be required at the Site or the likely cost to clean up the Site, assuming that remedial action is required."

**Response:** There must always be some elements of uncertainty attendant upon any attempt to estimate future costs at any Site. Yet U.S. EPA is constantly called on to make such estimates. In developing Action memoranda for removal actions, making claims in bankruptcy proceedings, developing cost estimates for proposed settlements such as the one proposed here, U.S. EPA is frequently asked to predict now how much may be spent in the future.

No one can be absolutely certain in such circumstances as to exactly how much will be spent as future costs incurred. However, the Agency and its employees have some experience at making such estimates. And the Agency compensates for the inevitable uncertainty by allowing for unforeseen contingencies. In the case of *de minimis* settlements, the Agency guidance allows for the addition of a premium, as some measure of protection against contingencies, unforeseen or unforeseeable.

In the case of early *de minimis* settlements, the guidance allows the Agency to impose a larger premium, to protect against what might be thought of as potentially greater uncertainties.<sup>11</sup> In the present case, the Agency has imposed a premium of 100%, and the Agency has imposed this premium on the entire baseline amount, including both the known past costs and the unknown (but reasonably estimated) future costs.

The Agency's estimate of total Site costs, based on the best reasonable estimate of future costs the Remedial Project Manager could make after consultation with her technical consultants, was expressed as a range, from \$1.5-\$2.25 million. The Agency could have chosen the low end of this range or the mid-point as a basis for calculating the *de minimis* settlement offers it made. However, the Agency chose the uppermost end of the range of estimates provided by its technical experts. To this already high estimate the Agency imposed a full 100% premium for all total Site costs (both past and future) anticipated as likely to be expended by both U.S. EPA and the PRPs at this Site. This produced a figure of \$4.5 million, and it was from this figure that U.S. EPA derived the settlement offers it made to the 83 *de minimis* parties.

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<sup>11</sup> See e.g., "Standardizing the De Minimis Premium," U.S. EPA, July 7, 1995.

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While the RI/FS field work has only just begun, the Agency is not "without sufficient basis" to make a reasonable estimate of future Site costs. On the contrary, the Agency already has quite a lot of information about the Site. The Site is known to be 2.3 acres in size, isolated, on a peninsula, on the bank of a river, next to a large chemical plant in a heavily industrialized area.

On April 26, 1982, U.S. EPA completed a Hydrogeologic and Extent of Contamination Field Investigation Study and issued a report (U.S. EPA 1982-FIT Project Report); on August 8, 1995, U.S. EPA issued its Focused Site Inspection Prioritization Site Evaluation Report. On September 29, 1997, Ohio EPA (OEPA), having conducted a Site Team Evaluation Prioritization Investigation at the Site, issued a report on the investigation (OEPA 1997, STEP Report).

It is known that ground water flows toward the river. This was determined by a CERCLA study performed in 1982, which also determined that ground water flowed at 33 feet per year and that this flow sent 59,000 gallons of ground water a year into the river from the Site. (FIT Report)

The studies conducted at the Site by U.S. EPA and OEPA and others have produced significant data on soil and groundwater contamination at the Site. This data was reported in the reports issued by U.S. EPA in 1982 and 1995 and by OEPA in 1997. The CRS Group comments refer disparagingly to this body of information as "dated data." However, it is also known that solvent reclamation activities at the Site ceased over twenty years ago, and nothing in the record suggests that any additional pollutants or contaminants have been added to the Site since companies that sent spent solvent to the Site ceased to do so more than two decades ago.

The most recent study at the Site which produced new sampling and analytical data was conducted by OEPA. Based on the data collected in 1996 and the analytical results reported in the 1997 STEP report, OEPA believes a high potential exists for ground water contamination to leach into the surface water. The potential for private drinking water supplies to be impacted by the Site is believed to be relatively low because the River acts as a hydraulic barrier between the Site and most down gradient receptors. In the 1997 STEP report, OEPA states the conclusion that the impact to the surface water from the Site needs further investigation through the collection of additional sampling and investigatory work. (OEPA 1997).

As for the soil pathway, in 1996, no residences, schools, day care facilities or sensitive populations were located close to the Site. The Site is located in an industrial/commercial area. Only one upgradient resident was located within one mile of the Site. (OEPA 1997). The primary potential threat of exposure to the soil is from direct contact to workers or by trespassers who approach the Site from the portion near the River that is not fenced, according to the conclusions drawn in the STEP report.

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The 1996 OEPA investigation evaluated surface water pathway targets from the probable point of entry (PPE) where the Site runoff enters the River to the Target Distance Limit (TDL) 15 miles downstream where the River enters Lake Erie. Targets evaluated in such investigations typically include surface water intakes that supply drinking water, fisheries, and sensitive environments. From the Site, surface water runoff flows into the East Branch of the Black River and eventually joins with the main branch of the Black River. The Black River flows north by northeast, emptying into Lake Erie. From the PPE to the TDL there are no surface water intakes that supply drinking water.

All of this data suggests that exposure pathways for remaining Site contamination may be somewhat limited. On July 2, 1999, the Agency for Toxic Substances and Disease Registry (ATSDR) with the support of the City of Elyria Health Department completed a Health Consultation which provided information about the potential health effects associated with the Site. The ATSDR concluded that the site "currently poses no apparent public health hazard to area residents. On-site workers could come into contact with low levels of contaminants in surface soils at the CRS property, but currently detected concentrations of those chemicals in the surface soils pose a minimal health hazard to possible workers." (ATSDR Report).

In developing its estimate of total future Site costs, U.S. EPA considered: (1) the known past costs, (2) the reasonably expected costs anticipated for pre-record of decision (pre-ROD) work, including the cost of performing the RI/FS and U.S. EPA oversight (also considering the contingency if U.S. EPA was forced to complete the RI/FS if the AOC Respondents failed to do so); and (3) U.S. EPA also considered the anticipated post-ROD costs, for the most likely range of remedial actions including U.S. EPA oversight (and a contingency if U.S. EPA was forced to complete the remedial action if the PRPs failed to do so) expected at the Site in the light of currently available information as detailed above; and (4) U.S. EPA also considered operation and maintenance costs that might reasonably be expected for the most likely range of remedial actions; (5) U.S. EPA also considered that certain enforcement costs were likely to continue to be incurred as U.S. EPA continued its PRP search and cost recovery efforts at this Site; finally, U.S. EPA considered the potential contingencies that might arise if unexpected discoveries during the investigation revealed conditions warranting a "hot-spot" removal action.

In summary, in response to the CRS Group's first set of comments, U.S. EPA believes that it acted with knowledge of the Site and the evidence of contamination there, based on previous studies, sufficient to provide an adequate basis for making a reasonable estimate of anticipated total future Site costs, considering all relevant factors in full accordance with Agency guidance. Therefore U.S. EPA believes the proposed settlement is both adequate, appropriate and should

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proceed as it will fulfill the Agency's policy "to encourage more, early and expedited settlements, and reduce the transaction costs of all parties."<sup>12</sup>

**Comment:** The CRS Group's second set of comments is grouped together under the heading: "EPA has Insufficient Information to Identify De Minimis Parties." In this collection of comments the Group attacks the Volumetric Ranking which TechLaw prepared for this Site. The Group argues that the records the CRS company provided to U.S. EPA have not been authenticated or accepted as evidence by a court. The Group argues that based upon its experience, additional information, not provided by PRPs like the Group members, in responses to 104(e) requests, is likely to become available (the Group asserts) during the discovery phases of cost recovery lawsuits. Thus, the Group argues, U.S. EPA has no adequate basis now to determine that some parties are *de minimis*, since U.S. EPA does not now possess perfect evidence, certified as admissible in a cost recovery proceeding, to demonstrate with certainty the source of each gallon of spent solvent ever sent to the Site.

**Response:** The comment seems to suggest that it is improper for U.S. EPA to enter into *de minimis* settlements until all the evidence of who sent spent solvent to the Site has been thoroughly litigated in federal court. This position if accepted would defeat an important purpose of the statute with regard to Section 122 (g). (i.e., Whenever practicable and in the public interest to reach an expedited final settlement with de minimis PRPs when in the judgment of the President's delegate those PRPs contributed minimal hazardous substances in comparison to other hazardous substances at the facility, in terms of amounts and toxicity.) U.S. EPA has told all the PRPs identified at the Site that these Site records provided by the CRS company, used by TechLaw as the basis for the volumetric ranking which U.S. EPA used as a sufficient basis for determining which parties are *de minimis* contributors at this Site, were incomplete and only provide limited information about which companies sent spent solvent to the Site. There are many years of operation for which little or no information is available.

Nevertheless, the records do provide a great deal of information about certain periods. A lot of information in the records discloses which PRPs sent how many gallons of spent solvent on specific occasions. The records document the shipment of over 5,000,000 gallons of spent solvent to the Site.

Although the authenticity of the CRS records or their admissibility in cost recovery proceedings has not yet been litigated, U.S. EPA is confident that, when and if called upon to do so, a court will definitely admit the CRS records as authentic evidence of shipments of spent solvent to the

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<sup>12</sup> See Streamlined Approach for Settlements with De Minimis Waste Contributors under CERCLA Section 122(g)(1)(A) U.S. EPA, July 30, 1993.



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Site. However, admissability in a trial is not a necessary criteria for use in the decision to enter into these de minimis settlement agreements. As demonstrated by this Response to Comments, those documents contain reliable information that is sufficient to make the determination to enter into these settlement agreements under Section 122(g).

The records were provided to U.S. EPA by the registered agent for service of process of Chemical Recovery Systems Inc., a Michigan corporation, the corporate parent of the now defunct Chemical Recovery Systems Inc. of Elyria, Ohio, an Ohio corporation, which operated a solvent reclamation facility on the Site for seven years. The individual who provided the records to U.S. EPA did so in response to a CERCLA 104(e) information request. This individual was a corporate officer of CRS Michigan, who was also the prime mover in setting up the CRS Ohio corporation which operated the Elyria facility on the Site. U.S. EPA believes these records provide the best available evidence regarding the relative quantities of spent solvent sent to the Site by all identified PRPs, and U.S. EPA believes they provide an appropriate and sufficient evidentiary basis for making the determinations upon which the proposed settlement is based. These records demonstrate that the waste disposed at the site which is attributable to each of the settling de minimis parties is minimal in both amount and toxicity compared to amount of wastes from other parties and the settlement of their liability amounts to only a minor portion of the response costs at the facility.

**Comment:** While adamantly refusing to admit anything and insisting that nothing in their comments endorses use of the CRS records to determine volumes of spent solvent sent to the Site, the CRS Group goes on to argue that if you look only at one set of records while ignoring the other two sets, you can argue that some PRPs identified by U.S. EPA as *de minimis* are "really" over the 1% line which U.S. EPA used as a cutoff point in making the determination.

**Response:** The CRS records included three principal sources of evidence as to which companies identified in those records sent specific shipments on certain dates of definite quantities of spent solvent to the Site. These three sources are the Dirty Inventory lists, the Accounts receivable records and the accounts payable records. TechLaw and U.S. EPA considered all three sources of evidence, as well as 104(e) records, in preparing the Waste In list and the Volumetric Ranking.

Of the three sources of evidence found in the CRS company records, the Dirty Inventory lists are most specific. These records provide the dates on which specific shipments arrived, the number of gallons, pounds or drums received at the Site in each shipment and frequently indicate the contents of the shipment (*e.g.*, "mask wash," "trichlor," "scrap solvent," "dirty thinner," etc.) and always provide the name of the company that sent the shipment.

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The Accounts Receivable records and the Accounts Payable records<sup>13</sup> also provide company names and dates which probably reflect dates accounts were billed or booked, but which can be correlated in many cases with shipment dates provided by the Dirty Inventory Lists. All three sets of records overlap to some extent, in covering portions of the period of site operations under the CRS company. In developing the Waste In list for the Site, TechLaw used all three sets of CRS company records, i.e., the "Dirty Inventory" lists, the Accounts Receivable records and the Accounts Payable records.

In doing so, TechLaw made careful comparison of the data from all three sets of records and was able to match specific, dated entries on the Dirty Inventory lists to specific, dated entries from the other records. This allowed TechLaw and the Agency to avoid counting individual shipments of spent solvent twice just because they were recorded twice (once in the Dirty Inventory lists and once in the accounting records). This comparison also enabled TechLaw to match entries recorded in gallons from the Dirty Inventory lists with entries recorded in dollars in the accounting records. This enabled TechLaw to assign proxy values in gallons to records which were kept in dollar figures.

When compared and analyzed in this way, the three sets of records kept by the CRS company produce a valid composite picture of shipments of spent solvent sent to the Site over a period of time from which one can derive a reasonably accurate idea of the total volume of spent solvent sent to the Site by PRPs, to the extent it was recorded and that record preserved in the company records provided by the CRS company to U.S. EPA. From this it is possible to derive a reasonably accurate indication of the percentage of that volume sent to the Site which came from each individual PRP.

To look at any one set of these records in isolation and then to calculate a total volume based on **only** that one set of records (e.g., using **only** the Dirty Inventory lists or **only** the Accounts Payable records) would be a duplicitous exercise which would actually distort the relative amounts sent to the Site by individual PRPs. For example, a PRP which was paid for most or all of the spent solvent it sent to the Site (as evidenced by the Accounts Payable records that it received regular cash payments for "scrap solvent for reclamation") might seem to become *de minimis* or vanish from the ranking altogether if one looked **only** at accounts receivable.

The Group and the only other party that provided comments have offered charts purporting to show that some PRPs participating in the proposed settlement could be interpreted to have sent more than 1% of total spent solvent sent to the Site, if **only** U.S. EPA would ignore some of the

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<sup>13</sup> The CRS company kept Purchase Payment Journals which were evidently kept up on a daily basis with entries therein later being transcribed into the Accounts Payable ledgers.

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CRS company records and look **only** at the records which produced that skewing of the relative percentages. This procedure suggested by the Group cannot be justified on any reasonable grounds and would be manifestly unfair to some parties by irrationally distorting the relative percentage of spent solvent they sent to the Site.

**Comment:** The Group has also commented that the CRS company records, and the Waste In list and Volumetric Ranking prepared by TechLaw, all show that a significant quantity (perhaps 15%) of the total volume of spent solvent sent to the Site was sent by companies whose names appear in these documents, but for whom no PRP has been identified. If no currently viable entity is found to pay for these contributions of spent solvent to the Site, the Group fears it may be asked to pay for an orphan share. The group feels this is unfair. The Group suggests that U.S. EPA should remove any volume it does not currently attribute to any specific currently viable and liable party before any volumetric ranking is calculated for the Site.

**Response:** U.S. EPA has recently discovered some parties that may be responsible for a portion of the quantity the Group fears may be left as an orphan share, but U.S. EPA agrees with the Group that it is possible, if not likely, that there may remain, at the end of the day, an orphan share of some significance, though probably not as large as the Group fears. U.S. EPA guidance recommends seeking to compel the larger contributors to absorb the cost of any orphan share, so the fear expressed by the Group is understandable.

The suggestion of the Group (removing the alleged "orphan share" from total site volume before calculating a volumetric ranking) would have the secondary effect (perhaps an "unintended consequence" from the Group's perspective) of significantly reducing total Site volume, raising the percentage share of all parties thereby, and offering the Group new arguments that some parties that contributed far less to the Site contamination than the members of the Group were no longer "entitled" to a *de minimis* settlement offer. U.S. EPA believes that the procedure it followed of counting all known volumes of spent solvent sent to the Site, and basing the volumetric ranking on that known total was the correct one.

U.S. EPA does wish to be fair to all PRPs at this Site, whether large or small. Therefore, U.S. EPA will be prepared to consider any suggestions that may be made at some later stage of the Superfund process regarding the most appropriate way of dealing with any "orphan share" that may remain, if any such "orphan share" has not already been adopted by PRPs discovered as the process continues.

**Comment:** The Group argues that PRPs should be excluded from *de minimis* settlements if they sent wastes that will impact the Site and/or the costs of cleanup disproportionately to their volume. The Group argues that the settlement is inappropriate because it is too early to judge

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which PRPs should be excluded from this settlement. The Group has previously asked U.S. EPA to exclude those parties who sent chlorinated solvents.

**Response:** All PRPs at this Site are known to have sent spent solvents to the Site. The extensive sampling and analytical work already done at the Site shows that elevated levels of solvents remain in subsurface soil, leachate and shallow ground water. Most of the CRS company records do not distinguish which PRPs sent which chemicals. The Dirty Inventory lists are occasionally more specific. But the Group does not admit that the Dirty Inventory lists are authentic or can be used for any purpose. In any event, both chlorinated and non-chlorinated solvents are known to be extremely toxic (e.g., benzene and vinyl chloride are both known carcinogens).

U.S. EPA does not think the Group has shown or can show that divisibility of harm arguments should apply at this Site. The Agency rejects the Group's argument that it would be more appropriate to wait in hope that new evidence might turn up later. Both the statute and the guidance encourage U.S. EPA to enter into *de minimis* settlements at an early stage of the process, and U.S. EPA believes that it now has ample evidence both regarding PRP contributions and conditions at the Site to enter into the proposed settlements at this time.

**Comment:** The Group also objects because it has recently received a copy of what it evidently believes to be a recent revision of the Volumetric Ranking, which the Group claims "made significant changes." The Group protests that U.S. EPA acted "improperly" in making *de minimis* offers "despite this additional evidence."

**Response:** The Group is confused here. The document referred to was actually last revised in December of 2002, before any offers were made. The September 4, 2003 date printed on the document evidently led the Group into error. TechLaw uses a software program which automatically prints the current date on any document when it is printed, so this December 2002 revision bears the date it was last printed. The decisions the Agency made were all based on this very same document, which was last revised in December 2002, before any decisions were made.

In any case, the latest revision of the Volumetric Ranking for this Site did not make changes "significant" in the sense the Group uses the term. The changes made in this last revision (December 2002) lowered only one party's "share" by eliminating certain quantities which U.S. EPA and TechLaw determined had not actually been sent to the Site. This party was not considered *de minimis* either before or after this change. A secondary effect was the lowering of total Site volume sent by all PRPs to the Site by a few gallons, but the effect on any other party's percentage share was too minuscule (in the fourth or fifth decimal place) to affect the Agency's decision on which parties should receive a *de minimis* offer.

**Comments Provided by Sherwin-Williams**

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The Sherwin-Williams Company (Sherwin-Williams), by and through its attorneys at Walter & Haverfield, LLP, has also offered comments on the proposed settlement. Sherwin-Williams also has commented previously on the Volumetric Ranking prepared for U.S. EPA at this Site by TechLaw Inc. Sherwin-Williams objects to the volumetric ranking on several grounds. Sherwin-Williams therefore objects to the *de minimis* settlement because of these objections to the volumetric ranking. Sherwin-Williams is also a member of the Group. Many of its comments echo those already expressed by the Group; nevertheless, Sherwin-Williams elected to submit its own comments, and U.S. EPA is providing the additional responses given below.

**Comments on the Volumetric Ranking**

Sherwin-Williams has commented in great detail, both in letters written earlier (December 13, 2002 and February 21, 2003) and again in its current comments, on the volumetric ranking prepared by TechLaw for U.S. EPA, objecting first to the evidence on which the ranking was based, then to both the assumptions employed and the methods used to produce the ranking and identify candidates for a *de minimis* settlement. U.S. EPA has carefully considered all these comments.

**Comment:** Sherwin-Williams objects to the use of the "Dirty Inventory" lists found among the CRS records. Sherwin-Williams objects that these records "are neither authenticated or explained." Sherwin-Williams also objects that these records cover only a short period of the Site history, with shipments recorded dating from 1974-1981, while the Site was known to be in operation for twenty years.

**Response:** This objection as to authenticity and/or admissibility has already been addressed as a comment by the Group, above. As noted above, although the authenticity of the CRS records or their admissibility in cost recovery proceedings has not yet been litigated, U.S. EPA is completely confident that, when and if called upon to do so, a court will admit the CRS records as authentic evidence of shipments of spent solvent sent to the Site.

As stated above, the records were provided to U.S. EPA by the registered agent for service of process of Chemical Recovery Systems Inc., a Michigan Corporation, the corporate parent of the now defunct Chemical Recovery Systems Inc. of Elyria, Ohio, an Ohio corporation, which operated a solvent reclamation facility on the Site for seven years. The individual who provided the records to U.S. EPA did so in response to a CERCLA 104(e) information request. This individual was a corporate officer of CRS Michigan, who was also the prime mover in setting up the CRS Ohio corporation which operated the Elyria facility on the Site. U.S. EPA believes these records provide the best available evidence regarding the relative quantities of spent solvent sent to the Site by all identified PRPs, and U.S. EPA believes they provide an appropriate and

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sufficient evidentiary basis for making the determinations upon which the proposed settlement is based.

In this comment, Sherwin-Williams also objected that the records are incomplete and only cover a portion of the Site's history. It is true that the CRS company records are not complete and that shipments of spent solvents sent to the Site during the first decade of operations are only sparsely documented<sup>14</sup>. However, the testimony of all the witnesses, and even what records are available for the earliest period of Site operation show that the Site began operation with a few customers and added more later.

The best documented period is also the period when the most companies were sending shipments of solvent to the Site. As noted before, the records and the witnesses together attest that the CRS facility continued to service the Obitts customer list, although new customers were also added over time. As noted above, Mrs. Obitts has stated that when her husband began the business, its principal customer and the primary source of spent solvent sent to the Site was Sherwin-Williams.

A total of nine truck drivers employed by Obitts and Chemical Recovery Systems, Inc. have stated that Sherwin-Williams of Cleveland, Ohio, was a customer from which they hauled shipments of spent solvent to the Site. One of these truck drivers said that he considered Sherwin-Williams to be a frequent Obitts and CRS customer as Sherwin-Williams could have had two pickups of dirty chemicals per month over a period from about the mid 1960s to the early 1980s. The amounts varied from full to partial tanker trailers.

Another of these truck drivers stated that he and other truck drivers picked up a total of about 40 drums of dirty chemicals a week from Sherwin-Williams every week for a period from about the late 1960s to the early 1970s. Another truck driver said that, during a period in the mid 1960s, he drove semi trucks hauling tanker trailers exclusively from and to Sherwin-Williams on Flats Road and another company both of which were located in Cleveland, Ohio. It was common for him to transport one tanker trailer and one truck load of drums containing dirty chemicals from these two companies, together, on a daily basis. Collectively, these Obitts and CRS truck drivers were employed from about 1960 to the early 1980s.

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<sup>14</sup> The remaining records available do document some transactions from 1960, 1965, 1968 and from 1970-1974. There are unquestionably gaps in the record for certain years of solvent reclamation activity at the Site, particularly during the first decade of operation, from 1960-1970.

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A total of five former administrative employees for Obitts and CRS identified Sherwin-Williams as a customer that had hazardous materials sent to the Site. One of these former employees said that Sherwin-Williams was probably the largest customer for a period from about the early 1960s to the early 1970s. Another one of them said that Sherwin-Williams was one of about four companies that Obitts/CRS did the most business with for a period from about the mid 1970s to early 1980s. Collectively, these former employees worked at the Site from about 1960 to the early 1980s.

A total of three operators/laborers for Obitts and CRS identified Sherwin-Williams as a customer that had hazardous materials sent to the Site. One of these former employees stated that it was common for Obitts and CRS workers to "run over" or spill chemicals while pumping them from one container into another. He recalled one particular occurrence at night when a careless employee allowed dirty chemicals from Sherwin-Williams, being pumped to tanks within the diked wall at the Site, to start spilling over onto the bare ground. Collectively, these former employees worked at the Site from about the early 1960s to the early 1980s.

It seems somewhat unlikely that many additional Site records of the shipment of spent solvent to the Site will be found. But even if additional documents could be found they would be likely to so increase the share of such disproportionately large contributors as Sherwin-Williams and others who were frequent and regular large volume contributors over time ever since the facility began solvent reclamation activities, that the relative percentages of lower volume contributors would almost certainly decrease as a percentage of total volume of spent solvent sent to the Site, even in cases where the actual number of gallons attributed to a small-volume contributor increased.

**Other Objections to the Proposed Settlement**

**Comment:** Another objection cited in Sherwin-Williams' comments is that the proposed settlement allows PRPs to "cash-out before the remedy has been identified." Sherwin-Williams also objects that there is "no basis in the record to develop a remedial cost estimate." Furthermore, Sherwin-Williams objects that the proposed settlements "rely on an estimate of total site costs that has been developed without the benefit of the remedial investigation data." Sherwin-Williams concludes by asserting that "a significant risk remains that the estimated site cost used to value the *de minimis* settlements will be too low to cover the actual Site costs, even with a significant premium."

**Response:** As these closely related objections to the proposed settlement are gathered together in one paragraph of Sherwin-Williams' comment letter, this response will address them together. Taken together they may be reduced to a single point, that the RI/FS process has not concluded

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and the remedy has not yet been identified, therefore some uncertainty remains as to the actual total site costs. This comment, or one extremely similar to it, has been made by the Group and is already addressed above, at pages 10-13 of this Response to Comments. A few points are reiterated, below.

The Agency's policy and guidance for *de minimis* settlements encourages the use of the *de minimis* settlement mechanism at an early stage of the Superfund process.<sup>15</sup> The goal of the policy is to minimize transaction costs for all parties as much as possible by cashing out large numbers of *de minimis* PRPs at an early stage in the process. Agency guidance anticipates that there may be more or less uncertainty regarding future site costs (and therefore total site costs) and compensates for this uncertainty by allowing for the Agency to charge a premium to those parties who elect to cash out by entering into a *de minimis* settlement with the Agency.

At this Site, the Agency has identified a large number of PRPs. Currently, the PRP list identifies 133 parties as potentially responsible for costs incurred at the Site.<sup>16</sup> The Agency believes that it will be to the benefit of all parties at the Site to use all the settlement tools available to the Agency as early as possible in the process, thus minimizing transaction costs by reducing the number of parties involved. The proposed settlement will cash out 83 PRPs, leaving 50.<sup>17</sup>

While field work on the RI/FS has only just begun, the Agency is not without significant information regarding the Site and the contamination found there in the past. Previous actions and studies have reduced and defined the contamination significantly. The geology and hydrogeology of the Site is fairly well known already. The isolated physical location of the Site, and the results of previous studies have made it possible for the Agency to make relatively well informed estimates of the likely parameters and potential cost of the most probable remedial actions that may be required at the Site.

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<sup>15</sup> See e.g., Streamlined Approach for Settlements with De Minimis Waste Contributors under CERCLA Section 122(g)(1)(A) U.S. EPA, July 30, 1993.

<sup>16</sup> This number has fluctuated over time, increasing as new PRPs were identified, and decreasing as some PRPs were dropped from the list in the light of new information, or as the list was consolidated to eliminate multiple iterations of the same company name where several plant locations had originally been identified, each plant listed as a separate PRP.

<sup>17</sup> This number is expected to increase soon. Additional general notice letters are currently being developed by the Agency to identify new PRPs, including several whom the Agency believes sent significant (non- *de minimis*) quantities of spent solvent to the Site.



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Based on this information, the project manager and her consultant have been able to develop reasonable estimates of the range of future costs that can reasonably be anticipated. Of course, such estimates cannot be made with absolute certainty; however, the guidance anticipates the lack of such certainty for *de minimis* settlements and provides for the imposition of a premium to guard against unknown contingencies. The Agency believes it has sufficient knowledge of the Site to proceed under these circumstances.

**Comment:** Sherwin-Williams also objects that the Agency has not provided a detailed "basis and supporting documentation" for "U.S. EPA's estimates of the total response costs incurred and to be incurred by EPA and private parties." In letters written earlier this year, Sherwin-Williams and its attorneys had demanded that the Agency provide such documentation. Sherwin-Williams complains that its demands were not satisfied and its letters not answered.

**Response:** U.S. EPA is not obliged to create documentation to satisfy a demand such as the one made by Sherwin-Williams in this matter, nor is it obliged to provide documentation when none is available. The total future cost estimates made by the U.S. EPA were developed by the U.S. EPA remedial project manager (RPM) based on her knowledge of all of the information available regarding the Site, its geophysical characteristics and history, previous investigations and studies, and other information including relevant U.S. EPA policy and guidance. A thorough discussion of that process has already been provided, above, as a response to comments made by the Group.

The RPM met with her consultant to discuss the reasonable future costs of both the PRP and U.S. EPA activities at the Site, at the request of the attorney assigned to the Site for U.S. EPA. These estimated future costs, expressed as a range, were communicated verbally to the Site attorney, who transmitted them to U.S. DOJ in a referral of the proposed *de minimis* settlement agreement. U.S. DOJ approved the proposed settlement and the estimated future site costs are included in the administrative Order on Consent which embodies the proposed *de minimis* settlement. The substance of those discussions and the pertinent part of that referral to U.S. DOJ have been summarized, above, in response to the comments made by the Group on this point.

**Comment:** Sherwin-Williams also objects to the proposed settlement because, its attorneys allege, "EPA has not notified a number of alleged significant parties."

**Response:** While somewhat unclearly stated, this objection appears to be based on the fact that the CRS records, as well as the volumetric ranking based on those records, identifies a number of companies by name who seem to have sent spent solvent to the Site, but for whom U.S. EPA and TechLaw have not yet identified a currently viable successor. As noted above, U.S. EPA continues to identify parties who sent significant quantities of spent solvent to the Site. Apparently, Sherwin-Williams believes it is inappropriate to enter into early *de minimis* settlements while PRP search activities continue. U.S. EPA believes that U.S. EPA, not

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Sherwin-Williams is the party that should interpret Agency policy and guidance on this question, and U.S. EPA believes it is appropriate to enter into these settlements, even though its PRP search activities still continue and still continue to bear fruit. After all, the discovery tomorrow of a currently viable successor to a company that once sent spent solvent to the Site would not alter by one gallon or the fraction of a percent the quantity sent to the Site by any party, nor would it be likely to increase or decrease the total costs at the Site.

**Comment:** In a similar vein, Sherwin-Williams objects that certain potentially responsible parties are not participating in the "CRS Group" (this term apparently refers to the parties who signed the AOC for RI/FS). This comment states that the "CRS Group" currently absorbs a substantial amount of volume that it is not responsible for and should be removed before a settlement is considered."

**Response:** This comment seems to suggest that U.S. EPA should have removed certain volumes from the Waste-In list before preparing a volumetric ranking and determining on the basis of that ranking who was eligible for a *de minimis* settlement. U.S. EPA believes that it acted appropriately at each step of this process of developing the *de minimis* settlement proposed, and that the Agency is acting in accordance with all applicable guidance and the relevant case law. The courts have agreed that U.S. EPA has some discretion in determining who is eligible for a *de minimis* settlement under Section 122(g) of CERCLA. U.S. EPA believes it has been guided at all times by considerations of fairness in developing the proposed settlement, that it has used its discretion wisely, and that the proposed settlement is fair, equitable and in the public interest. For more on this point, refer to the Agency's response given above to the Group's comments regarding "orphan share."

**Summary:**

In summary, U.S. EPA believes that the proposed settlement is fair, equitable, and in the public interest. The Agency believes that it has a firm basis in its knowledge of the Site gained in several previous studies taken over the last twenty years for making a reasonable estimate of total anticipated future Site costs and that this basis, together with the substantial premium charged to the parties entering into this settlement, is sufficient to ensure that the settlement is adequate. The Agency also believes that the proposed settlement, undertaken at a relatively early stage of the Superfund process at this Site to further the Agency's stated goal "to encourage more, early and expedited settlements, and reduce the transaction costs of all parties," is entirely appropriate under the factual circumstances existing at this particular Site as more fully set forth above. Likewise, the Agency believes it has adequate information in the record to make reasonable determinations as to which parties at this Site may be allowed to join in this *de minimis* settlement.

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The Agency rejects the arguments that it would be more appropriate to wait in hope that new evidence might turn up later. Both the statute and the guidance encourage U.S. EPA to enter into *de minimis* settlements at an early stage of the process, and U.S. EPA believes that it now has sufficient evidence both regarding PRP contributions and conditions at the Site to enter into the proposed settlements at this time.

CERCLA SECTION 122(g) (4) DE MINIMIS CONTRIBUTOR  
ADMINISTRATIVE ORDER ON CONSENT

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**CERCLA SECTION 122(g)(4) DE MINIMIS CONTRIBUTOR  
ADMINISTRATIVE ORDER ON CONSENT**

IN THE MATTER OF:

) U.S. EPA

) Docket No.

**V-W- '03-C-750**

CHEMICAL RECOVERY SYSTEMS, INC. )  
142 Locust Street, Elyria, Ohio )  
CERCLIS ID# OHD 057 001 810 )

Proceeding under Section 122(g)(4) )  
of the Comprehensive Environmental )  
Response, Compensation, and )  
Liability Act of 1980, as amended, )  
42 U.S.C. 9622(g)(4) )

**ADMINISTRATIVE ORDER  
ON CONSENT**

**I. JURISDICTION**

1. This Administrative Order on Consent ("Consent Order" or "Order") is issued pursuant to the authority vested in the President of the United States by Section 122(g)(4) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. § 9622(g)(4), to reach settlements in actions under Section 106 or 107 of CERCLA, 42 U.S.C. §§ 9606 or 9607. The authority vested in the President has been delegated to the Administrator of the United States Environmental Protection Agency ("EPA") by Executive Order 12580, 52 Fed. Reg. 2923 (Jan. 29, 1987), and further delegated to the Regional Administrators of the EPA by EPA Delegation No. 14-14-E (May 11, 1994). This authority has been re-delegated by the Regional Administrator to the Superfund Division Director on May 2, 1996.

2. This Administrative Order on Consent is issued to the persons, corporations, or other entities identified in Appendix A ("Respondents"). Each Respondent agrees to undertake all actions required by this Consent Order. Each Respondent further consents to and will not contest EPA's jurisdiction to issue this Consent Order or to implement or enforce its terms.

3. EPA and Respondents agree that the actions undertaken by Respondents in accordance with this Consent Order do not constitute an admission of any liability by any Respondent.

Respondents do not admit, and retain the right to controvert in any subsequent proceedings other than proceedings to implement or enforce this Consent Order, the validity of the Statement of Facts or Determinations contained in Sections IV and V, respectively, of this Consent Order.

## II. STATEMENT OF PURPOSE

4. By entering into this Consent Order, the mutual objectives of the Parties are:

a. to reach a final settlement among the Parties with respect to the Site pursuant to Section 122(g) of CERCLA, 42 U.S.C. § 6922(g), that allows Respondents to make a cash payment, including a premium, to resolve their alleged civil liability under Sections 106 and 107 of CERCLA, 42 U.S.C. §§ 9606 and 9607, for injunctive relief with regard to the Site and for response costs incurred and to be incurred at or in connection with the Site, thereby reducing litigation relating to the Site;

b. to simplify any remaining administrative and judicial enforcement activities concerning the Site by eliminating a substantial number of potentially responsible parties from further involvement at the Site; and

c. to obtain settlement with Respondents for their fair share of response costs incurred and to be incurred at or in connection with the Site by the EPA Hazardous Substance Superfund, and by private parties, to provide for full and complete contribution protection for Respondents with regard to the Site pursuant to Sections 113(f)(2) and 122(g)(5) of CERCLA, 42 U.S.C. §§ 9613(f)(2) and 9622(g)(5).

## III. DEFINITIONS

5. Unless otherwise expressly provided herein, terms used in this Consent Order that are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in the statute or regulations. Whenever the terms listed below are used in this Consent Order, the following definitions shall apply:

a. "CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. § 9601, et seq.

b. "Consent Order" or "Order" shall mean this Administrative Order on Consent and all appendices attached

hereto. In the event of conflict between this Order and any appendix, the Order shall control.

c. "Day" shall mean a calendar day. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next working day.

d. "EPA" shall mean the United States Environmental Protection Agency and any successor departments, agencies or instrumentalities.

e. "EPA Hazardous Substance Superfund" shall mean the Hazardous Substance Superfund established by the Internal Revenue Code, 26 U.S.C. § 9507.

f. "Interest" shall mean interest at the current rate specified for interest on investments of the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually on October 1 of each year, in accordance with 42 U.S.C. § 9607(a).

g. "Paragraph" shall mean a portion of this Consent Order identified by an arabic numeral.

h. "Parties" shall mean EPA and the Respondents.

i. "Respondents" shall mean those persons, corporations, or other entities listed in Appendix A.

j. "Response costs" shall mean all costs of "response" as that term is defined by Section 101(25) of CERCLA, 42 U.S.C. § 9601(25).

k. "Section" shall mean a portion of this Consent Order identified by a roman numeral.

l. "Site" shall mean the Chemical Recovery Systems Inc. Superfund Site, encompassing approximately 4 acres, located at 142 Locust Street in Elyria, Ohio and depicted more clearly on the map attached as Appendix B.

m. "United States" shall mean the United States of America, including its departments, agencies and instrumentalities.

#### IV. STATEMENT OF FACTS

6. The Site is approximately four (4) acres (with several lots within the 4 acres), and is located at 142 Locust Street (formerly Maple Street) in a predominantly commercial/industrial area near the central business district of the city of Elyria, in Lorain County, Ohio. The Site occupies a part of a peninsula jutting into the Black River. The western boundary of the Site runs along the bank of the East Branch of the Black River ("River"), the northern boundary adjoins property owned by the Englehard Chemical Company (formerly Harshaw Chemicals), the eastern boundary runs along Locust Street and Englehard Chemical Company, and the Site's southern boundary adjoins the property of M&M Aluminum Siding. Presently, Mrs. Dorothy Obitts owns the Site. She leases it to the M&M Aluminum Siding Company. The Site is presently used for storage purposes. Two buildings remain on Site; located in the southeast corner of the Site is a combination warehouse/office building, and a Rodney Hunt Still building. The foundation from the former Brighton Still building is located in the northwest corner. Two sumps located inside of the still buildings allegedly were used to dispose of waste. One of the sumps located in the shell of the Rodney Hunt building is easily identified. Information regarding the construction of these sumps or where the collected waste from the sumps were disposed of is unknown. The Site is fenced in on all sides except for the side bordering the River, which is overgrown by heavy vegetation. The Site is characterized as a Superfund Alternative Site. This designation indicates that the Site has not been placed on the National Priority List (NPL) yet, but that U.S. EPA, having compiled a pre-scoring package on the risks presented by the Site, intends to treat it as a NPL site and retains the option of nominating the Site for inclusion on the NPL. The Site was used for solvent reclamation activities for twenty years from approximately 1960-1980. Numerous substantial releases of hazardous substances at the Site have been documented.

7. Hazardous substances have been or are threatened to be released at or from the Site. These releases have been documented in photographs, witness statements, and other documentary evidence. Extensive contamination of Site soils and groundwater with volatile organic chemicals is documented in previous investigations. U.S. EPA and Ohio EPA have completed and issued the following Site-related reports: on April 26, 1982, U.S. EPA completed a Hydrogeologic and Extent of Contamination Field Investigation Study and issued a report (U.S. EPA 1982-FIT Project Report); on August 8, 1995, U.S. EPA issued its Focused Site Inspection Prioritization Site Evaluation Report. On



September 29, 1997, Ohio EPA, having conducted a Site Team Evaluation Prioritization Investigation at the Site, issued a report on the investigation (OEPA 1997, STEP Report).

8. As a result of the release or threatened release of hazardous substances, EPA has undertaken response actions at or in connection with the Site under Section 104 of CERCLA, 42 U.S.C. § 9604, and will undertake response actions in the future. In addition to the investigations and reports referenced in the previous paragraph, U.S. EPA has entered into an Administrative Order on Consent with 24 PRPs for a Remedial Investigation and Feasibility Study at the Site to be undertaken by those 24 PRPs.

9. In performing these response actions, EPA has incurred and will continue to incur response costs at or in connection with the Site.

10. Each Respondent listed on Appendix A arranged for disposal or treatment, or arranged with a transporter for transport for disposal or treatment, of a hazardous substance owned or possessed by such Respondent, by any other person or entity, at the Site, or accepted a hazardous substance for transport to the Site which was selected by such Respondent.

11. The amount of hazardous substances contributed to the Site by each Respondent does not exceed 55,000 gallons of materials containing hazardous substances and the hazardous substances contributed by each Respondent to the Site are not significantly more toxic or of significantly greater hazardous effect than other hazardous substances at the Site.

12. EPA estimates that the total response costs incurred and to be incurred at or in connection with the Site by the EPA Hazardous Substance Superfund and by private parties is between \$1,500,000 and \$2,250,000. The payment required to be made by each Respondent pursuant to this Consent Order is a minor portion of this total amount. EPA has identified persons other than the Respondents who owned or operated the Site, or who arranged for disposal or treatment, or arranged with a transporter for disposal or treatment, of hazardous substances owned or possessed by such persons at the Site, or who accepted hazardous substances for transport to the Site. EPA has considered the nature of its case against these non-settling parties in evaluating the settlement embodied in this Consent Order.

## V. DETERMINATIONS

13. Based upon the Statement of Facts set forth above and on the administrative record for this Site, EPA has determined that:

a. The Chemical Recovery Systems Inc. Site is a "facility" as that term is defined in Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

b. Each Respondent is a "person" as that term is defined in Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

c. Each Respondent is a "potentially responsible party" within the meaning of Section 122(g)(1) of CERCLA, 42 U.S.C. § 9622(g)(1).

d. There has been an actual or threatened "release" of a "hazardous substance" from the Site as those terms are defined in Section 101(22) and (14) of CERCLA, 42 U.S.C. § 9601(22) and (14).

e. The actual or threatened "release" caused the incurrence of response costs.

f. Prompt settlement with each Respondent is practicable and in the public interest within the meaning of Section 122(g)(1) of CERCLA, 42 U.S.C. § 9622(g)(1).

g. As to each Respondent, this Consent Order involves only a minor portion of the response costs at the Site within the meaning of Section 122(g)(1) of CERCLA, 42 U.S.C. § 9622(g)(1).

h. The amount of hazardous substances contributed to the Site by each Respondent and the toxic or other hazardous effects of the hazardous substances contributed to the Site by each Respondent are minimal in comparison to other hazardous substances at the Site within the meaning of Section 122(g)(1)(A) of CERCLA, 42 U.S.C. § 9622(g)(1)(A).

## VI. ORDER

14. Based upon the administrative record for the Site and the Statement of Facts and Determinations set forth above, and in consideration of the promises and covenants set forth herein, the following is hereby AGREED TO AND ORDERED:

**VII. PAYMENT**

15. Within 30 days of the effective date of this Consent Order, each Respondent shall pay to the EPA Hazardous Substance Superfund the amount set forth in Schedule C, attached. **[Schedule C will be attached to the copy of this Order which is signed by U.S. EPA's Superfund Division Director, and it will contain the names and payments of all parties who sign this Order. The payment assigned to your company will be the dollar figure given in the cover letter sent with this Order].**

16. Each Respondent's payment includes an amount for:  
a) past response costs incurred at or in connection with the Site; b) projected future response costs to be incurred at or in connection with the Site; and c) a premium to cover the risks and uncertainties associated with this settlement, including but not limited to, the risk that total response costs incurred or to be incurred at or in connection with the Site by the EPA Hazardous Substance Superfund, or by any private party, will exceed the estimated total response costs upon which Respondents' payments are based.

17. Each payment shall be made by certified or cashier's check made payable to "EPA Hazardous Substance Superfund." Each check shall reference the name and address of the party making payment, the Site name, the EPA Region and Site Spill ID Number 0521, and the EPA docket number for this action, and shall be sent to:

U.S. Environmental Protection Agency, Region 5  
Superfund Accounting  
P.O. Box 70753  
Chicago, Illinois 60673

18. At the time of payment, each Respondent shall send notice that such payment has been made to:

Thomas C. Nash C-14J  
U.S. EPA, Region 5  
77 West Jackson Blvd.  
Chicago, IL 60604

**VIII. FAILURE TO MAKE PAYMENT**

19. If any Respondent fails to make full payment within the time required by Paragraph 15, that Respondent shall pay Interest on the unpaid balance. In addition, if any Respondent fails to

make full payment as required by Paragraph 15, the United States may, in addition to any other available remedies or sanctions, bring an action against that Respondent seeking injunctive relief to compel payment and/or seeking civil penalties under Section 122(1) of CERCLA, 42 U.S.C. § 9622(1), for failure to make timely payment.

#### **IX. CERTIFICATION OF RESPONDENT**

20. By signing this Consent Order, each Respondent certifies, individually, that, to the best of its knowledge and belief, it has:

a. conducted a thorough, comprehensive, good faith search for documents, and has fully and accurately disclosed to EPA, all information currently in its possession, or in the possession of its officers, directors, employees, contractors or agents, which relates in any way to the ownership, operation, or control of the Site, or to the ownership, possession, generation, treatment, transportation, storage or disposal of a hazardous substance, pollutant, or contaminant at or in connection with the Site;

b. not altered, mutilated, discarded, destroyed or otherwise disposed of any records, documents, or other information relating to its potential liability regarding the Site after notification of potential liability or the filing of a suit against it regarding the Site; and

c. fully complied with any and all EPA requests for information regarding the Site pursuant to Sections 104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e).

#### **X. COVENANT NOT TO SUE BY UNITED STATES**

21. In consideration of the payments that will be made by Respondents under the terms of this Consent Order, and except as specifically provided in Section XI (Reservations of Rights by United States), the United States covenants not to sue or take administrative action against any of the Respondents pursuant to Sections 106 or 107 of CERCLA, 42 U.S.C. §§ 9606 or 9607, relating to the Site. With respect to present and future liability, this covenant not to sue shall take effect for each Respondent upon receipt of that Respondent's payment as required by Section VII. With respect to each Respondent, individually, this covenant not to sue is conditioned upon:

a) the satisfactory performance by Respondent of all obligations under this Consent Order; and b) the veracity of the information provided to EPA by Respondent relating to Respondent's involvement with the Site. This covenant not to sue extends only to Respondents and their successors in interest, and does not extend to any other person.

#### **XI. RESERVATIONS OF RIGHTS BY UNITED STATES**

22. The covenant not to sue by the United States set forth in Paragraph 21 does not pertain to any matters other than those expressly specified in Paragraph 21. The United States reserves, and this Consent Order is without prejudice to, all rights against Respondents with respect to all other matters including, but not limited to:

a. liability for failure to meet a requirement of this Consent Order;

b. criminal liability;

c. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments; or

d. liability arising from any future arrangement for disposal or treatment of a hazardous substance, pollutant or contaminant at the Site after the effective date of this Consent Order.

23. Notwithstanding any other provision in this Consent Order, the United States reserves, and this Consent Order is without prejudice to, the right to institute judicial or administrative proceedings against any individual Respondent seeking to compel that Respondent to perform response actions relating to the Site, and/or to reimburse the United States for additional costs of response, if:

a. information is discovered which indicates that such Respondent contributed hazardous substances to the Site in such greater amount or of such greater toxic or other hazardous effects that such Respondent no longer qualifies as a de minimis party at the Site because such Respondent contributed more than 55,000 gallons of materials containing hazardous substances or because such Respondent sent hazardous substances to the Site which are significantly more toxic or of significantly greater

hazardous effect than other hazardous substances at the Site.

### **XII. COVENANT NOT TO SUE BY RESPONDENTS**

24. Respondents covenant not to sue and agree not to assert any claims or causes of action against the United States or its contractors or employees with respect to the Site or this Consent Order including, but not limited to:

a. any direct or indirect claim for reimbursement from the EPA Hazardous Substance Superfund based on Sections 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law;

b. any claims arising out of response activities at the Site; and

c. any claim against the United States pursuant to Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, relating to the Site.

25. Nothing in this Consent Order shall be deemed to constitute preauthorization or approval of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. 300.700(d).

### **XIII. EFFECT OF SETTLEMENT/CONTRIBUTION PROTECTION**

27. Nothing in this Consent Order shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Consent Order. The United States and Respondents each reserve any and all rights (including, but not limited to, any right to contribution), defenses, claims, demands, and causes of action which each Party may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a Party hereto.

28. In any subsequent administrative or judicial proceeding initiated by the United States for injunctive relief, recovery of response costs, or other relief relating to the Site, Respondents shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised in the subsequent proceeding were or should have been brought in the

instant action; provided, however, that nothing in this Paragraph affects the enforceability of the covenant not to sue included in Paragraph 21.

29. The Parties agree that each Respondent is entitled, as of the effective date of this Consent Order, to protection from contribution actions or claims as provided by Sections 113(f)(2) and 122(g)(5) of CERCLA, 42 U.S.C. §§ 9613(f)(2) and 9622(g)(5), for "matters addressed" in this Consent Order. The "matters addressed" in this Consent Order are all response actions taken by the United States and by private parties, and all response costs incurred and to be incurred by the United States and by private parties, at or in connection with the Site.

#### **XIV. PARTIES BOUND**

30. This Consent Order shall apply to and be binding upon EPA and upon Respondents and their successors and assigns. Any change in ownership or corporate or other legal status of a Respondent, including but not limited to, any transfer of assets or real or personal property, shall in no way alter such Respondent's responsibilities under this Consent Order. Each signatory to this Consent Order certifies that he or she is authorized to enter into the terms and conditions of this Consent Order and to execute and bind legally the party represented by him or her.

#### **XV. INTEGRATION/APPENDICES**

31. This Consent Order and its appendices constitute the final, complete and exclusive agreement and understanding among the Parties with respect to the settlement embodied in this Consent Order. The Parties acknowledge that there are no representations, agreements or understandings relating to the settlement other than those expressly contained in this Consent Order. The following appendices are attached to and incorporated into this Consent Order:

"Appendix A" is [the list of Respondents].

"Appendix B" is [the map of the Site].

#### **XVI. PUBLIC COMMENT**

32. This Consent Order shall be subject to a public comment period of not less than 30 days pursuant to Section 122(i) of

CERCLA, 42 U.S.C. § 9622(i). In accordance with Section 122(i)(3) of CERCLA, 42 U.S.C. § 9622(i)(3), EPA may withdraw or withhold its consent to this Consent Order if comments received disclose facts or considerations which indicate that this Consent Order is inappropriate, improper, or inadequate.

**XVII. ATTORNEY GENERAL APPROVAL**

33. The Attorney General or his designee has approved the settlement embodied in this Consent Order in accordance with Section 122(g)(4) of CERCLA, 42 U.S.C. § 9622(g)(4).

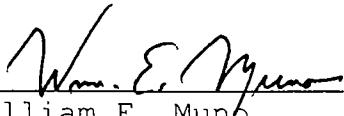
**XVIII. EFFECTIVE DATE**

34. The effective date of this Consent Order shall be the date upon which EPA issues written notice to Respondents that the public comment period pursuant to Paragraph 32 has closed and that comments received, if any, do not require modification of or EPA withdrawal from this Consent Order.

IT IS SO AGREED AND ORDERED:

U.S. Environmental Protection Agency

By: \_\_\_\_\_

  
William E. Munro  
Superfund Division Director  
Region 5, U.S. EPA

9/30/03

[Date]



THE UNDERSIGNED RESPONDENT enters into this Consent Order in the matter of **Docket Number:** V-W-'03-C-750, relating to the **Chemical Recovery Systems Site in Elyria, Ohio.**

FOR RESPONDENT: \_\_\_\_\_  
[Name]

\_\_\_\_\_  
[Address]

By: \_\_\_\_\_  
[Name]

\_\_\_\_\_  
[Date]

Appendix A  
List of Respondents

**Current PRP Company Name (Historical Name if applicable)    Dollar Amount**

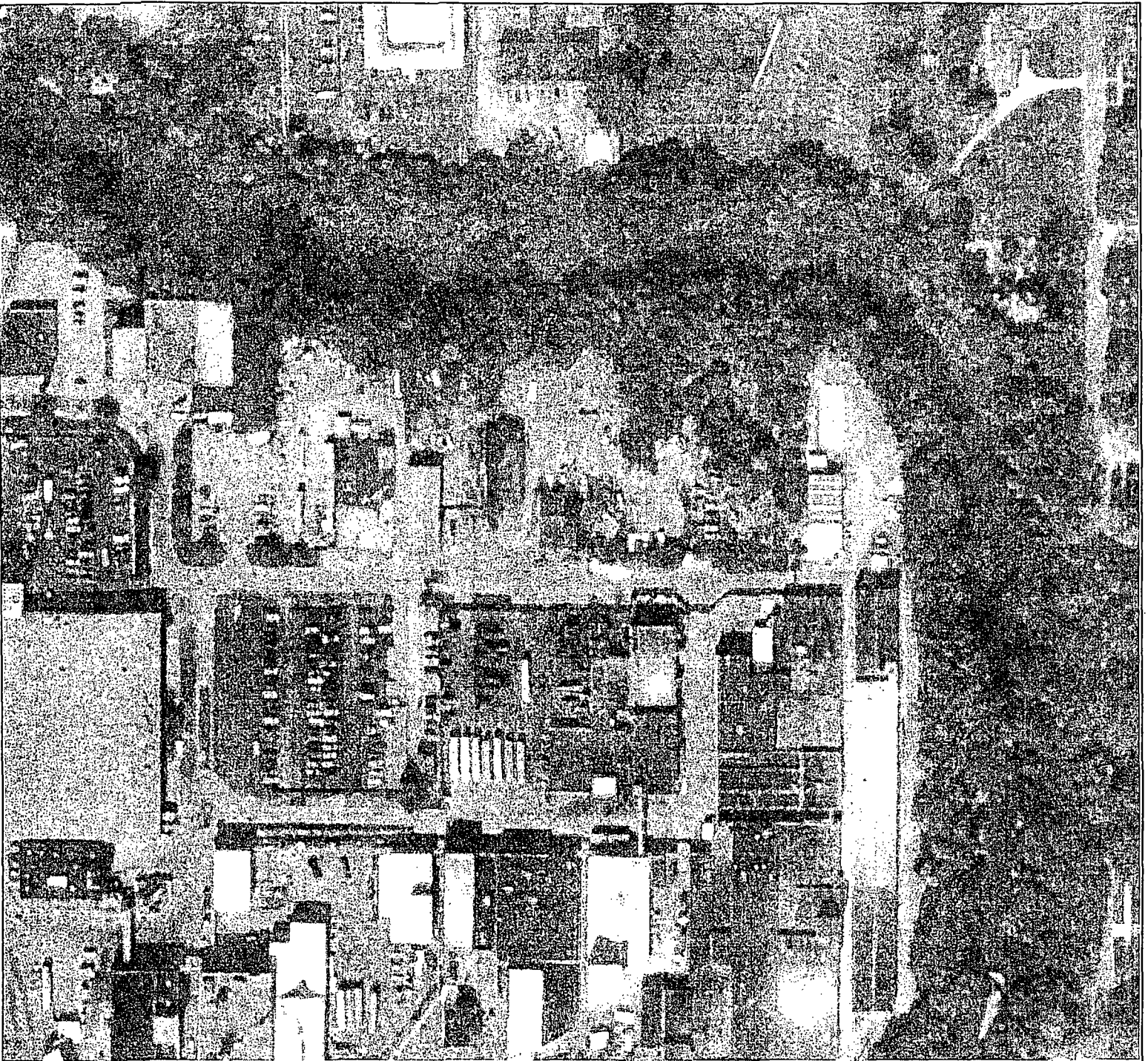
|  |             |
|--|-------------|
| 3M Company   | \$3,500.00  |
| Adelphia, Inc.   | \$1,800.00  |
| Aexcel Corporation (f/k/a DeSantis Coatings)   | \$9,300.00  |
| Alcoa Building Products, Inc. (f/k/a Stolle Corporation)                                       | \$2,500.00  |
| American Colors, Inc.  | \$1,000.00  |
| American Greetings Corporation   | \$2,400.00  |
| Auto & Industrial Finishes, Inc.   | \$1,000.00  |
| Barr, Inc.   | \$1,000.00  |
| BASF Corp. (Limbacher Paint & Color Works, Inc.)   | \$15,400.00 |
| Bayer Polymers, LLC (f/ka Mobay)   | \$1,000.00  |
| Benjamin Moore (f/k/a Technical Coatings, Inc.)  | \$21,000.00 |
| Berenfield Containers, Inc.  | \$4,800.00  |
| Borden Chemical, Inc.  | \$7,900.00  |
| BorgWarner, Inc. (Borg-Warner Corporation)   | \$1,600.00  |
| Bosch Rexroth Corp. (Mannesman Rexroth/Rexroth Corp.)  | \$1,200.00  |
| Bridgestone/Firestone North American Tire, LLC<br>(Firestone Tire & Rubber)                    | \$20,700.00 |
| Browning Ferris Industries of Ohio, Inc.   | \$12,300.00 |
| Bucyrus International, Inc. (Bucyrus Erie)   | \$6,800.00  |
| Bud Industries, Inc.   | \$15,100.00 |
| Chemcentral Corp.  | \$43,900.00 |
| Chemical Distributors, Inc.  | \$7,500.00  |
| Chemtron Corp.   | \$1,200.00  |
| C L Holdings, Inc. (f/k/a Conneaut Leather, Inc.)  | \$10,000.00 |
| Crown Beverage Packing, Inc; Crown Cork & Seal Co., Inc.;<br>and Level 3 Communications, Inc.; |             |
| f/k/a Continental Can Company, Inc.)   | \$7,800.00  |
| Cytec Olean, Inc. (f/k/a Conap, Inc.)  | \$8,800.00  |
| CWM Chemical Service, LLC (f/k/a Chemtrol)   | \$3,900.00  |
| DaimlerChrysler Corp. (Chrysler Plastic Products)  | \$16,100.00 |
| Dorn Color, Inc.   | \$3,400.00  |
| Dow Corning Corporation  | \$11,600.00 |
| Eastman Kodak Company  | \$1,900.00  |
| FBC Chemical Corporation   | \$27,200.00 |
| Ferriot Inc. (f/k/a Ferriot Brothers, Inc.)  | \$5,400.00  |
| FirstEnergy Nuclear Operating Co. (Painesville Nuclear Plant)                                  | \$2,600.00  |
| Foseco Metallurgical, Inc.   | \$2,300.00  |
| Franklin International (Franklin Chemical/Glue)  | \$6,400.00  |
| General Electric Company   | \$5,700.00  |
| Great Lakes Terminal & Transportation Corp. of Pennsylvania                                    | \$1,800.00  |

Appendix A  
List of Respondents

|  |             |
|--|-------------|
| Hasbro, Inc. (Kenner Toys)   | \$9,200.00  |
| Honeywell International, Inc. (Sinclair & Valentine)                         | \$14,600.00 |
| Hoover Company, The  | \$13,200.00 |
| Hubbell Power Systems, Inc. (Ohio Brass)                                     | \$3,300.00  |
| Hukill Chemical Corporation  | \$5,500.00  |
| Ingersoll-Rand (Clark Equipment Company)                                     | \$1,100.00  |
| International Paper (Masonite/Marlite)                                       | \$10,300.00 |
| ITW Food Equipment Group, LLC (Hobart Corp.)                                 | \$7,600.00  |
| J C Whitlam Manufacturing Company  | \$5,000.00  |
| Kalcor Coatings Company  | \$4,000.00  |
| Liberty Solvents and Chemicals   | \$3,900.00  |
| Mahoning Paint Company   | \$2,600.00  |
| Mameco International   | \$2,900.00  |
| Marconi Communications, Inc. (Lorain Products)                               | \$5,200.00  |
| Miller Studio, Inc.  | \$6,700.00  |
| Moen, Inc. (Stanadyne, Inc.)   | \$3,500.00  |
| Molded Fiber Glass Companies   | \$2,300.00  |
| Neville Chemical Company   | \$6,800.00  |
| Nordson Corporation  | \$17,200.00 |
| Northrop Grumman Space & Mission Systems Corp. (TRW, Inc.)                   | \$2,300.00  |
| Ohio Dept. of Transportation   | \$9,500.00  |
| Owens-Illinois, Inc.   | \$16,600.00 |
| Parker Hannifin Corp., Nichols Airborne Division<br>(Airborne Manufacturing) | \$3,900.00  |
| Pfizer (Parke-Davis & Co./Warner Lambert, LLC)                               | \$13,800.00 |
| Philip Services Corp. (Nortru, Inc.)   | \$21,800.00 |
| Plas-Tanks Industries, Inc.  | \$1,900.00  |
| Quality Synthetic Rubber, Inc.   | \$500.00    |
| R. W. Beckett Corporation  | \$1,500.00  |
| Rexam Beverage Can Americas (National Can)                                   | \$6,000.00  |
| Robertson Ceco Corporation (f/k/a H. H. Robertson Co.)                       | \$11,500.00 |
| Rockwell International   | \$5,600.00  |
| Ruscoe Company, The (W. J. Ruscoe Co.)                                       | \$6,500.00  |
| Scott Fetzer Company, The (Quikut)   | \$3,600.00  |
| Shell Oil Company (Shell Chemical Co.)                                       | \$13,100.00 |
| Taylor Metal Products Corp.  | \$1,400.00  |
| Technical Products, Inc.   | \$9,000.00  |
| Tecumseh Products Company  | \$500.00    |
| Temperature Control Company  | \$1,100.00  |
| ThermaTru Corp. (Lake Shore Industries)                                      | \$43,900.00 |
| Therm-O-Disc, Inc.   | \$4,400.00  |
| Thomas Steel Strip Corp.   | \$1,000.00  |

Appendix A  
List of Respondents

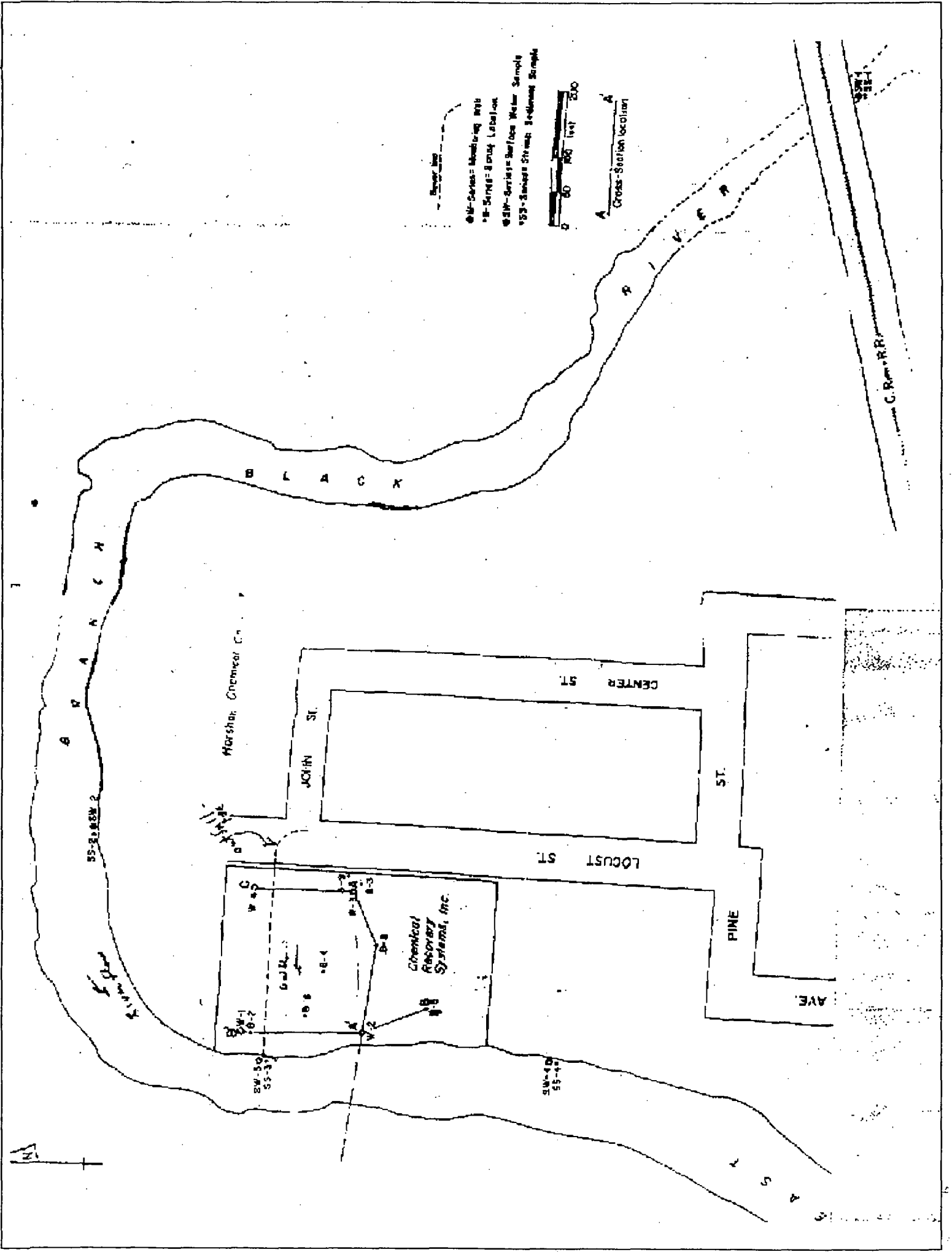
|                              |             |
|------------------------------|-------------|
| U S Chemical & Plastics      | \$3,700.00  |
| Universal Cooperatives       | \$1,000.00  |
| Viacom, Inc. (Luxaire, Inc.) | \$1,800.00  |
| Whirlpool Corp.              | \$39,700.00 |
| Wooster Brush Company, The   | \$2,900.00  |



APPENDIX B

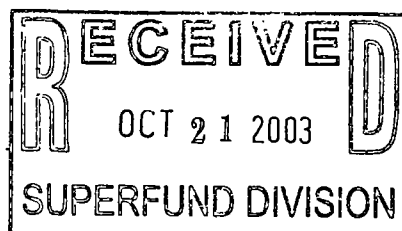
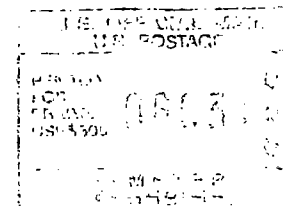
May 18,

1998

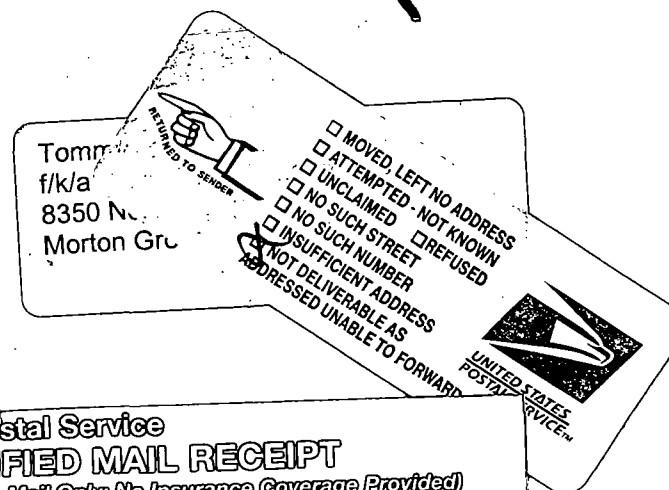


U.S. EPA Region 5  
Deena Sheppard-Johnson, SR-6J  
Remedial Enforcement Support Sect.  
77 West Jackson Blvd.  
Chicago-IL-60604 (re: CRS)

PREPAID  
CRS CLASS



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| U.S. Postal Service<br>CERTIFIED MAIL RECEIPT<br>(Domestic Mail Only; No Insurance Coverage Provided)               |        |
|---|--------|
| OFFICIAL USE  |        |
| Postage   | \$ 198 |
| Certified Fee   | 2.30   |
| Return Receipt Fee<br>(Endorsement Required)  | 1.75   |
| Restricted Delivery Fee<br>(Endorsement Required)   |        |
| Total Postage   | \$ 603 |
| Sent To<br>Tommy Armour Golf<br>f/k/a Victor Comptometer-Golf<br>8350 North Lehigh Avenue<br>Morton Grove, IL 60053 |        |
| PS Form 38  |        |

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CHICAGO IL LOOP STA  
OCT 21 2003  
USPO

D. Sheppard  
SR-6J(CRS)